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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1893.

No. ~~4~~ 5.

THE PUEBLOS OF ZIA, SANTA ANA, AND JEMEZ,  
APPELLANTS,

vs.

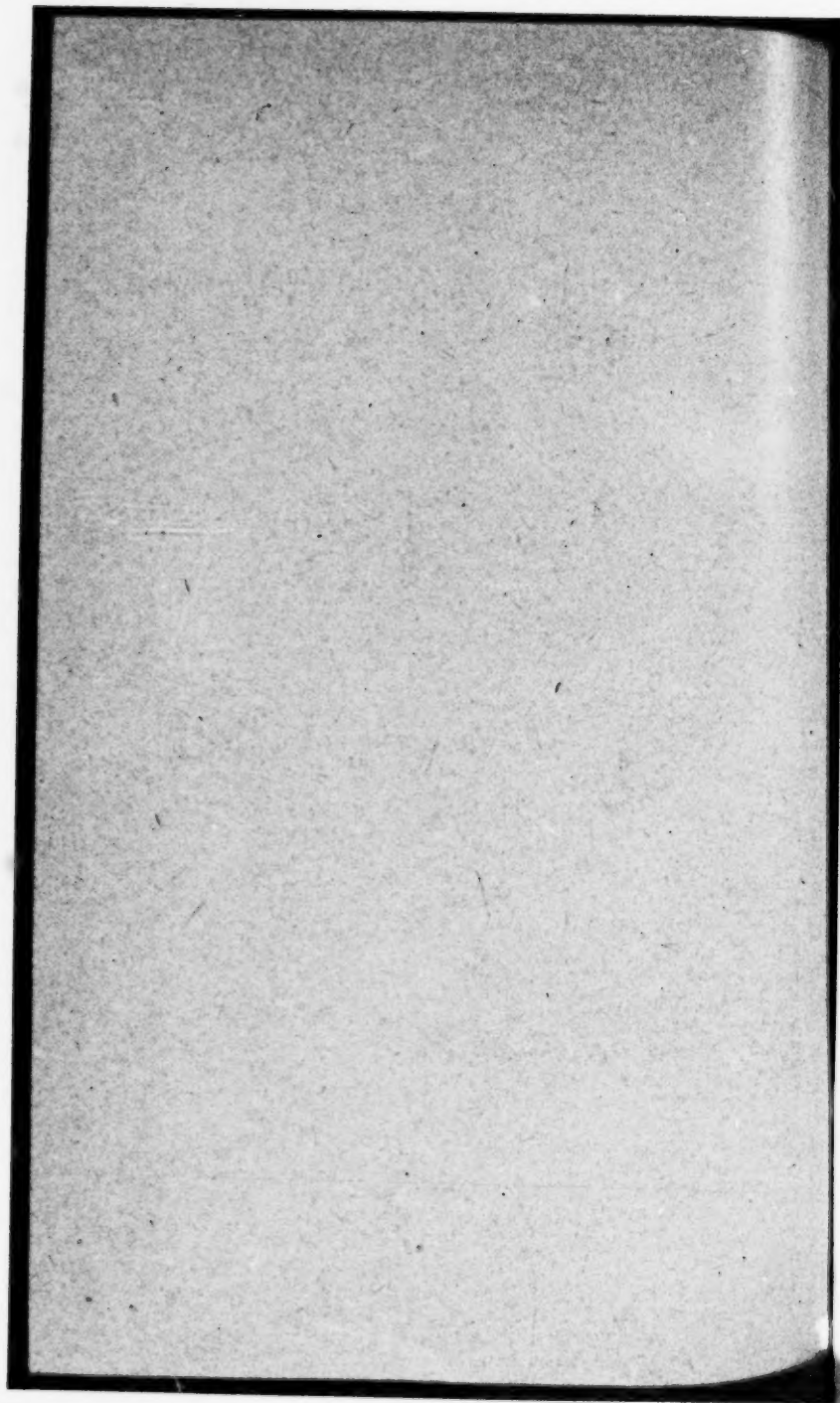
THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED OCTOBER 7, 1893.

(15,414.)

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(15,414.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 41.

THE PUEBLOS OF ZIA, SANTA ANA, AND JEMEZ,  
APPELLANTS,

*vs.*

THE UNITED STATES ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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## U. S. Court of Private Land Claims.

THE PUEBLOS OF ZIA, SANTA ANA, and JEMEZ, Plaintiffs, }  
*versus*  
 THE UNITED STATES OF AMERICA, PEDRO PEREA, JACOB } No. 50.  
 Perea, Mariano S. Otero, Charles H. Gildersleeve, and }  
 Carlos W. Lewis, Defendants. }

For the confirmation of the Ojo del Espiritu Valley grant.

In the United States Court of Private Land Claims in and  
 for the Territory of New Mexico, Sitting at Santa Fé.

THE PUEBLO- OF ZIA, SANTA ANA, and }  
 JEMEZ, Plaintiffs, }  
*vs.* } Petition for Confirmation of  
 THE UNITED STATES OF AMERICA, } the Ojo del Espiritu Santo  
 Pedro Perea, Jacobo Perea, Mariano } Valley Grant. No. 50.  
 S. Otero, and Charles H. Gildersleeve }  
 and Carlos W. Lewis, Defendants. }

To the honorable the chief justice and associate justices of the  
 United States court of private land claims:

Now come the Pueblos of Zia, Santa Ana, and Jemez, by and  
 through their counseil, George Hill Howard — Jeffries & Earle, and  
 make and file in and before this court this their petition in the  
 matter of the Ojo del Espiritu Santo Valley grant, and, respectfully  
 informing the court, allege and say:

1. That the Indian Pueblos of Zia, Santa Ana, and Jemez, situ-  
 ated in the county of Bernalillo, Territory of New Mexico, the  
 above-named petitioners and plaintiffs, by virtue of a title derived  
 from the Spanish government that was complete and perfect at the  
 date when the United States acquired sovereignty in the Territory  
 of New Mexico, are the joint owners in fee of that certain tract of  
 land, situate in the county of Bernalillo, Territory of New Mexico,  
 bounded and described as follows and as set forth in the aforesaid  
 title, to wit:

From north to south Paraje of the Ventana to the Vado de  
 Piedra of the Puerco river, the northern boundary of the settlers of  
 the place "San Fernando de Nuestra Señora de la Luz;" from east  
 to west from the Pueblo of Zia to the eastern banks of the Puerco  
 river, the whole of the valley of the Ojo del Espiritu Santo, being  
 embraced within the center and within the boundaries of this grant  
 and containing, as near as your petitioners can state without a final  
 survey, 382,849 acres of land.

2. That about A. D. 1766 the aforesaid Indian pueblos, your  
 petitioners, prayed Tomas Velez Cachupin, governor general of the  
 then province of New Mexico, of the Kingdom of Spain, that he  
 grant them in the name of His Majesty the aforesaid tract, and that

on the 16th day of June, A. D. 1766, the said governor general named and commissioned Bartolome Fernandez, chief alcalde, &c., of the Gueres nation, to examine the said tract and as to the needs of the said petitioners therefor and whether the same conflicted with other rights, &c.; that thereafter, in June, A. D. 1766, the said alcalde, in obedience and in pursuance of the said commission, made his report in the said matter to the said governor general; that thereafter, to wit, on the sixth day of August, A. D. 1766, the said governor general of the said province, in the name of His Majesty, thereunto authorized by virtue of his office, the edicts, laws, ordinances, royal orders and customs then in force and observance in the said province, made and issued unto the said Pueblos of Zia, Santa Ana, and Jemez, your petitioners, in writing, a formal and final grant in fee absolute, coupled with no conditions whatsoever other than that in case of necessity the horses of the royal garrison of Santa Fé might be pastured thereon without let or hindrance upon the part of the said grantees, and in said grant the governor general directed the chief alcalde, Bartolome Fernandez, to give unto the said pueblos the royal possession of the said grant, to place his proceedings on record following the granting decree, to return the same to the said governor general in order that a proper testimonio or official copy thereof might be given to each of said pueblos and the original deposited in the archives of the government, where it should remain.

4. That thereafter, to wit, on the 28th day of September, A. D. 1766, in pursuance of the said grant and the directions therein contained, the said alcalde, with all the formalities and observances of the law and customs then obtaining in the said province, gave juridical and royal possession of the said tract to the said Indian pueblos and made his official written record and certificate thereof.

5. That all of the aforesaid steps and proceedings in the matter of the said grant for the said tract of land from and including the petition, informe, grant, and act of possession *was* joined together and formed the original expediente of title and *was* duly filed in the archives of the government. Official testimonios thereof were at the time made and given to the said pueblos by the said governor general, all whereof is shown and set forth in and by Executive Document No. 206 of the House of Representatives, 43rd Congress, 1st session, which is filed herewith in duplicate as Exhibit A, as containing correct copies of the Spanish language and translation of one of the said official testimonios of the said grant expediente filed in the archives, as hereinbefore set forth, the said official testimonio being without the control of your petitioners and on file in the matter of said grant in the office of the United States surveyor general at Santa Fé, New Mexico, and marked as file or case No. II.

4 Your petitioners also filed the said executive document as a part of their petition and showing as containing a more or less correct sketch map of said tract of land. Your petitioners file the said executive document for the further purpose that the testimony of witnesses now dead therein contained, had, and taken in the matter

of the said grant before the United States surveyor general of the Territory of New Mexico may be availed of by your petitioners upon the trial of this cause in this court, as provided by law.

6. Your petitioners have caused diligent search to be made in the archives of the Spanish government extant in the said United States surveyor general's office for the aforesaid original archive expediente of the said grant, but have been unable to find the same. Wherefore they file the said official testimonio or copy thereof which was made and issued at the said time of the said grant to the Pueblo of Zia and which remained in its possession from that time, as evidence of its title, until it was filed, the same prior to A. D. 1856, in the office of the United States surveyor general, in the matter of the said grant.

That from the said date of the said grant to the said pueblos of the said tract of land they, the said pueblos, your petitioners, have continuously, openly, and notoriously to the present time remained in the actual use and occupation of the same with their herds of horses, cattle, and sheep and cultivating some portions thereof, all under claim of their exclusive right thereto by virtue of the said grant as against the whole world, and they aver that they are now by virtue of the said grant and their said open, continuous, and notorious occupation and use of the same the owners in fee absolute of the said tract and the whole thereof, except that portion of the same which may be in conflict with that certain grant known as and called the Santissima Trinidad Galvana Ignacio Sanchez Vergara tract and in regard to which they have made release unto the claimants thereof, a copy of which said release is filed herewith and marked Exhibit B, the original thereof being filed in the matter of the said Vergara or Galvana tract, pending in this court as cause No. 26.

5 8. That on February 7th, A. D. 1874, James K. Proudfit, then United States surveyor general of the Territory, after all due proceedings, proofs, and examination in the matter of the said grant of the said tract to the said Indian pueblos rendered his decision thereon and reported the said grant to Congress for confirmation (see Exhibit A), but the same has not been finally acted upon by or under the authority of Congress.

9. That thereafter, to wit, October & November, A. D. 1877, the then surveyor general for the said Territory caused a preliminary survey of the said tract to be made, which said survey your petitioners believe and aver to be correct and in accordance with the description and boundaries thereof as set forth in the aforesaid grant to them therefor. The certified copy of the plat or map of the said preliminary survey is filed herewith and marked as Exhibit C.

10. Your petitioners are informed and believe it to be true that certain parties, through the heirs-at-law of Luis Cabeza de Baca, make some claim to a portion of this grant, but the specific nature thereof and upon what claim of title they rest the same your petitioners are not sufficiently advised to show definitely except in this, that Congress has confirmed a grant to the heirs of the said Baca for a tract of land called the Ojo del Espiritu Santo grant, which

was made May 23rd, A. D. 1815, to the said Baca, and which laps upon or conflicts with the grant of your petitioners, which was made, as hereinbefore set forth, September 2, A. D. 1766; that no patent has been made or issued to the said heirs of the said Baca for the said tract so confirmed to them by Congress, as hereinbefore set forth; that defendant Jacobo Perea, as your petitioners are informed and believe, has obtruded upon that portion of the said grant confirmed by Congress to the heirs of said Baca, and that defendants Pedro Perea, Mariano S. Otero, and Charles H. Gildersleeve claim to have an interest of some sort therein under the said confirmation to the heirs of said Baca, and your petitioners aver that the proceedings before the United States surveyor general, wherein the action of Congress was had, were wholly without notice to them, as is required by law, and they allege that the same were therefore irregular and void.

11. And your petitioners further allege that prior to and during the year 1815 A. D. and continuously thereafter your petitioners were in the actual and notorious possession of said grant made to them, as hereinbefore set forth, and that they had no notice  
6 of any application or proceedings or of any act of juridical possession of said Luiz Cabeza de Baca under the alleged grant of that date, and that the aforesaid possession of the aforesaid petitioners was well known to the said Baca at the said date of the alleged grant and juridical possession thereof to him, and that for all these reasons the said alleged grant to the said alleged Baca is subject to and void as against the grant of your petitioners.

12. That if, notwithstanding, the grant to your petitioners is a valid, perfect grant prior to and covering the Ojo del Espiritu Santo grant, and if, notwithstanding, the Ojo del Espiritu Santo grant is null for want of notice to your petitioners of the application thereof, and if, notwithstanding, the confirmation of the Ojo del Espiritu Santo grant has been secured upon a report of the surveyor general based upon proceedings irregularly had before him without notice to your petitioners, still your honors shall find that, the same having been confirmed by Congress, you cannot confirm your petitioners' grant for so much thereof as is confirmed by the Espiritu Santo grant. Your petitioners allege that each and every acre of their grant covered by the confirmed Ojo del Espiritu Santo grant is of a real value in excess of one and one-fourth of a dollar.

13. Your petitioners are informed and believe it to be true that defendant Carlos W. Lewis, through the heirs-at-law of Bernardo de M. ra y Pacheco and Pedro Padilla, makes some claim to a portion of this grant by virtue of a grant called Los Alamos, made A. D. 1768, to the said Pacheco and Padilla, a petition for the confirmation of which said grant is now filed in this court as claim No. 38, the same not having been confirmed by Congress; but how much or to what extent, or if at all, this said grant conflicts with that of petitioners they cannot say, for the reason that no correct official survey of this Los Alamos grant has been made, and your petitioners are informed and believe that a correct survey of this Los Alamos grant would not really lap upon or conflict with the bound-

aries of said grant of petitioners set forth hereinbefore; but petitioners aver that should there be such a lap or conflict of boundaries that their grant boundaries should prevail, for the reason of the priority of their grant and for the further reason that they were not according to law and custom cited as colindantes or contiguous proprietors to make objection, if any they had.

7 14. That your petitioners are informed and believe it to be true that Governor Don Fernando Chacon, on the 6th of March, A. D. 1798, made a grant to Jose Miguel Garcia and his associates, known as the town of Cañon de San Diego, which said grant has been confirmed by Congress June 21st, 1860, upon a report made by the surveyor general June 10th, 1859, after hearing had before him, without notice to your petitioners; that it is claimed for this grant that it hath boundaries entirely beyond the limits of the certificate of juridical possession in this, that after laying off the league of the Pueblo of Jemez the chief portion forms a surplus of two thousand one hundred varas, which they (the natives of the Pueblo of Jemez) had before arriving at the Cañon de San Diego, and of this he placed said Garcia and his associates in possession, and of the right of said Garcia and his associates and their representatives to this strip of two thousand and one hundred varas, lying between the Pueblo of Jemez and the Cañon de San Diego, your petitioners made no question; but your petitioners allege that the confirmation of the grant of the town of the Cañon de San Diego must be held to be limited to the area and boundaries as set out in the certificate of juridical possession, as the same was reported to Congress in No. 25 of the private land claims of New Mexico; and they further allege that any survey which fails to conform strictly with said boundaries, as set out in said certificate, acquired no validity from the confirmation, in so far as it exceeds the boundaries designated in said certificate, and that in so far as the survey claimed for the grant of the town of Cañon de San Diego laps upon the grant of your petitioners the same is unconfirmed by Congress and is null and void, and your petitioners are informed that Pedro Perea, Mariano S. Otero, and Charles H. Gildersleeve, with sundry other persons unknown to your petitioners, claim now to own the ground of the town of Cañon de San Diego.

That in so far as your petitioners are aware or have any reason <sup>said</sup> to believe that the tract of land claimed by them under their said grant has no mines of gold, of silver, or of quicksilver, or any mineral thereof upon it.

Wherefore your petitioners pray that the validity of the title to the grant of Luis Jaramillo, under and in accordance with the laws, usages, and customs of Spain, the extent and location thereof, and the claim of your petitioners thereto may be enquired into and decided by this court, and that the same may be by your decree established, confirmed, and set apart to your petitioners, as the heirs and legal representatives of the original grantee, in accordance with the metes and bounds set forth in the original

grant document and juridical possession given thereunder; that a survey thereof may be made by the surveyor general of the United States under the direction and instruction of this court; that the petitioners may be granted proper process to bring the defendants into court in accordance with the law, rules, and practice thereof, to make answer hereto, and that they be granted such other and further relief in the premises as in equity and justice the court shall deem meet.

And your petitioners will ever pray, &c.

GEO. HILL HOWARD AND  
JEFFRIES AND EARLE,

*Counsel for Petitioners.*

Filed Nov'r 28, 1892.

9 [Endorsed:] No. 50. In the U. S. court of private land claims. Zia, Santa Ana, & Jemez, plaintiffs, *vs.* United States. Petition. Geo. Hill Howard and Jeffries and Earle, plaintiffs' att'ys.

10 UNITED STATES OF AMERICA, *ss* :

In the Court of Private Land Claims, Santa Fé District, July Term, 1893.

PUEBLOS OF ZIA, SANTA ANA, & JEMEZ	} No. 50.
<i>vs.</i>	
THE UNITED STATES <i>et al.</i>	

*Answer.*

Comes now The United States, by its attorney, Matt. G. Reynolds, and, for its separate answer to plaintiffs' petition and so much thereof as may be necessary, says:

It denies that said plaintiffs are the joint owners in fee of the tract of land described in the first paragraph of said petition; says it is not true, as alleged in the second paragraph of said petition, that said plaintiffs, in the year 1766, petitioned the governor general of this province to grant them said tract of land.

Says it has no knowledge or information as to whether or not the governor, on the 16th day of June, 1766, or at any other time instructed an alcalde to examine into the needs of these plaintiffs or the propriety of granting them the same.

Says it is not true, as alleged in the third paragraph of said petition, that on the 6th day of August, 1766, or at any other *other* time,

11 under and by virtue of any laws, usages, or customs then enforced and observed in this province, — made or authorized to be made to said plaintiffs grant to said land, as alleged in said petition.

Says it has no knowledge or information sufficient to enable it to form a belief as to whether the plaintiffs or any one of them had in their possession or under their control or ever had what purports to be testimonio or an official copy of said alleged grant.

It denies that any record exists or ever existed of the same, and says that this country was transferred to the United States by its predecessor without any record, notice, or evidence of the existence of the same.

It denies that the plaintiffs were placed in juridical possession of said property by any one authorized thereto on the 28th day of September, 1766, or that there was ever any written record thereof made as alleged.

Says it is not true that said plaintiffs were placed, in September, 1766, in possession of the property sued for, and that they have ever since been in the actual use and occupation of the same.

Further answering, the defendant says that whatever rights in and to said property the plaintiffs may have ever had was purely a permissive right or license, subject to a revocation by the authorities at any time or subject to be forfeited by abandonment or non-user, and whatever use and occupation they may have had of any part thereof was for pasture grounds and for no other purpose, and that the same had been abandoned as such long prior to the acquisition of this country by the United States, and at said time

12 said license had been forfeited by non-user, and the same had not for many years prior to the acquisition of this country been of any use or benefit to these plaintiffs.

Further answering, it says that long prior to the acquisition by the Republic of Mexico said license had been abandoned and the same appropriated by the Spanish government; that several years prior to Spain relinquishing dominion over this province, to wit, in the year 1815, it granted a portion of said land to one Luis Cabeza de Baca, which said grant was recognized by the Republic of Mexico, recognized by the United States, and finally confirmed and patented by the United States to the heirs of said Baca.

The rights, if any, these plaintiffs may have had in and by said alleged grant of 17th were ignored, denounced, and forfeited by said grant of 1815 to said Baca, and the exercise of dominion and ownership over the same or various portions thereof occurred at various times subsequent to said alleged grant in 1766.

Further answering, it says that the only authority under the law the officials of said province had to grant land to Indians was in the form of a settlement or pueblo; that it was the policy of the Spanish government to consolidate and to draw into communities all of its Indian subjects, and the authorities were limited to four leagues in making said grants.

That in obedience to said policy, law, usage, and custom the officials of New Spain, and particularly of this province, in no case granted to Indians more than four leagues, and in obedience to said custom, law, and usage each of the plaintiffs applied to this Government for a confirmation of its pueblo and received a patent

13 therefor, at said time making no claim for the land now sued for.

Further answering, defendant says said claim is not one which, under the law of nations, the treaty of cession, or equity, in good conscience this Government is bound to recognize and respect.

All allegations not hereinbefore answered are denied, and it is demanded that plaintiffs be put to their proof of all the allegations in said petition, as provided they shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that they be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem mete and proper and which it may be authorized to make in the premises.

Respectfully submitted.

(Signed)

MATT. G. REYNOLDS,

*U. S. Attorney.*

Filed June 26th, 1893.

14 [Endorsed:] (Copy.) Case No. 50, file No. —. Pueblos of Zia, Santa Ana, and Jemez, plaintiffs, *vs.* The United States, defendant. Zia, Santa Ana, and Jemez grant. Answer. Matt. G. Reynolds, U. S. attorney.

15 In the Court of Private Land Claims, Territory of New Mexico.

THE PUEBLOS OF ZIA, SANTA ANA, and JEMEZ }  
*vs.*  
 THE UNITED STATES *et al.* }

The joint and several answer of Pedro Perea, Jacobo Perea, and Mariano S. Otero, defendants, to the petition of The Pueblos of Zia, Santa Ana, and Jemez.

The defendants Pedro Perea, Jacobo Perea, and Mariano S. Otero, saving and reserving unto themselves all and all manner of benefit of exception to the many errors and insufficiencies in said petition contained, for answer thereto or to so much and such part thereof as they may deem necessary and essential to answer, answering, say:

They deny that there is any such body or person known as the Pueblo of Zia, Santa Ana, or Jemez, or that any such body, either jointly or separately, exists or has any right to exist in proceedings for the confirmation of any grant title whatever; that any such body is or was authorized, empowered, or entitled to hold, take, possess, or enjoy said real estate, either under the laws of the Kingdom of Spain, Mexico, or the United States.

They deny that such Indians can sue or bring suit by virtue of their designation as Indians of the Pueblo of Zia, Santa Ana, or Jemez or all of them combined.

They deny that by virtue of any title derived from the Spanish government, either perfect or imperfect, the said alleged petitioners are owners, in fee or otherwise, of the tract of land described in said petition.

They deny that the said alleged grant is a perfect or complete grant in any sense of the word, and that any such grant or title was ever made or granted, and deny that there was ever any record of the same, and allege the fact to be that the said Indian pueblos long since acquired title by means of confirmation to all of the lands which were ever granted or given to them.

They deny that in 1776 the said Indian pueblos prayed the governor general of New Mexico to grant them the tract, as set out in the petition aforesaid, or that said governor general commissioned any one to examine the tract as to the needs of the petitioners therefor or in any other respect, as set out in said petition, 16 or that, in obedience to any such commission, any alcalde made any report in said matter to said governor general.

They deny that the governor general, as stated in said petition, in the name of His Majesty or otherwise, by virtue of his office or the edicts, laws, ordinances, rules, orders, or customs then in force and observance in New Mexico, made or issued to said Indian pueblos or either of them, in writing or otherwise, any formal or final grant in fee, absolute or otherwise, with or under any conditions as stated in said petition, or that said governor directed said Bartolome Fernandez to give possession of said tract to said pueblos or to place on record any proceedings of so doing or to return the same to the governor general, in order that any testimonio or official copy thereof might be given to either of said pueblos or that the same might be deposited in the archives of the Government, where it should remain; and they allege the fact to be that there never was any record made in the archives of said Government of any such grant; that there was never any return made by any alcalde of any possession given to said grant, nor was there any original paper or papers referring to the same deposited in the archives of the Government.

They deny that thereafter, in pursuance of said alleged grant and the directions therein contained, any such alcalde in any manner gave any possession of said tract of land to said Indian pueblos or either of them or made any official or written record or certificate thereof.

They deny that all the steps and proceedings, as alleged in said petition, for the grant of said tract of land, including the petition, informe, grant, or act of juridical possession, *was* joined together and formed the original expediente of title or *was* duly filed in the archives of the Government, or that official testimonios thereof were at that or any other time made and given to said pueblos by said governor general, as set out in said petition; and these defendants further say that not having been furnished with a copy of Exhibit A mentioned in said petition they are unable to state what may have been in the same; but they deny that said Exhibit A contains a copy of any legal or valid grant to said pueblos, and they also deny that said executive document referred to contains any copy of any legal or valid grant of land which was ever granted or authorized to be granted.

They deny that the copy filed with said petition, claimed to be a

copy of the official testimonio of any grant, is a copy of such testimonio issued to any pueblo whatever, or that the same  
17 remained in the possession of the Pueblo of Zia from that time as evidence of such title; and they deny that any testimonio whatever was ever filed in the surveyor general's office prior to the year 1856 in the matter of said alleged grant.

They deny that said pueblos have continuously, openly, and notoriously to the present time remained in the actual use and occupation of said lands with their herds of horses, cattle, or sheep, or that they have cultivated any portions thereof through or under claim of right thereto or by virtue of said alleged grant or otherwise as against any one, but, on the contrary, that they state the fact to be that for all that portion of said tract of land which conflicts with the Ojo del Espiritu Santo grant or tract the owners of the said last-mentioned tract have ever held open, notorious, and uninterrupted possession thereof, claimed by the owners of the same under and by virtue of the grant made to Luis Maria Baca by the governor general of New Mexico, subsequent to the date mentioned in said petition, before the grant to said pueblos.

They deny that the alleged survey caused to be made by the surveyor general for the Territory of New Mexico for said alleged grant of land is correct and in accordance with the description and boundaries of the said alleged grant; they admit that they, through the heirs of Luis Maria Cavesa de Baca, make claim to all that portion of said alleged grant of land which lies within the boundaries of the said grant made to Luis Maria Cavesa de Baca and known and called by the name of the Ojo del Espiritu Santo grant; they admit that Congress has confirmed said last-mentioned grant, which was made at the time specified in said petition, and that the same laps over and conflicts with the lands alleged and pretended to be included in said alleged grant of said petitioners; they admit that no patent has been issued to the heirs of Baca for said tract, but the same has been duly surveyed and segregated from the public domain; these defendants deny that said Jacobo Perea has obtruded upon any portion of the said grant confirmed by Congress to the heirs of Baca, but admit that he is an owner of a portion of said grant and has a legal right to enter upon a portion of it, and that said Pedro Perea and Mariano S. Otero are also owners of a portion of said grant or claim and have an interest therein under said confirmation to the heirs of said Baca.

They deny that the proceedings before the United States  
18 surveyor general, wherein the action of Congress was had in said grant to Baca, were without notice to the said petitioners, or that any such notice was required by the law, but they state the fact to be that said grant to Baca was approved by the surveyor general and confirmed by Congress, in accordance with the provisions of law, in an open and notorious manner; and these defendants state that they acquired their interest in the same from one Jose Leandro Perea, who, for the consideration of more than six thousand dollars in cash, purchased a portion of the interests of the heirs of Luis Maria Cavesa de Baca, which last-named person had

long held it prior to the purchase by said Perea from his heirs of said interests, and that said heirs of said Baca made conveyance to said Jose Leandro Perea for a good — a valid consideration for all their interests, said Jose Leandro Perea thereby becoming a *bona fide* purchaser of such interests without any notice whatever of any claim of petitioners; that at the time said Perea purchased said portions of interests there was no record or files on the record of the claim of the said petitioners and nothing which gave said Jose Leandro Perea any notice of the claim of the said petitioners; that at that time said petitioners had not made application to the surveyor general for the approval of their grant, or that the same should be remitted to Congress for action, but as to each one of the said three pueblos other grants, to the extent of four square leagues, had been petitioned for by them and confirmed to them by the Congress of the United States, and patents to them therefor had been issued.

They deny that prior to the year 1815 or continuously thereafter said petitioners were in the actual or notorious possession of said land alleged to be granted to them, or that they had no notice of the application or of the proceedings or of any act of juridical possession to the said Luis Maria Cavesa de Baca under the said grant to him, but, on the contrary, state that the act of juridical possession was open, notorious, and that the occupation of said tract of land thereafter by the said Baca and his employés was open, notorious, and continuous from the date of the said grant, in the year 1815, up to the present time.

They deny that the possession of the alleged petitioners of the said alleged parcel of land was ever known to the said Baca at the time of the grant to said Baca or at the time juridical possession thereof was given them, but state the fact to be that said

19 Baca was given possession of the said grant under a good and valid grant from the government of Spain, and that he was placed in possession thereof by an officer of the government of Spain to the full extent of the boundaries mentioned therein, and that never until the said petitioners filed their claim with the surveyor general about ten years since has there been any pretence that the said Baca or his said heirs and assigns were not entitled to the full, free, uninterrupted, and undisputed possession and ownership of the whole of said tract of land included in said grant to said Baca.

These defendants are unable at present to furnish a copy of said grant, but state that the same is a portion of the public archives in the surveyor general's office, and they pray that the same may be examined as to any evidence in this case, together with all other papers appertaining to said grant and filed in said surveyor general's office.

They therefore pray that the said petition of plaintiffs may not be granted, especially in respect to that part thereof which may conflict with the grant made to said Baca.

(Signed)

T. B. CATRON,

Filed January 10, 1893.

Att'ys for Def'ts.

20 [Endorsed:] 111. In the court of private land claims of the Territory of New Mexico. The Pueblos of Zia, Santa Ana, and Jemez *vs.* The United States *et al.* Copy of the joint and several answer of Pedro Perea, Jacobo Perea, and Mariano S. Otero, defendants. Filed — —. — — —, for U. S. att'y.

21 In the United States Court of Private Land Claims.

PUEBLOS OF ZIA, SANTA ANA, AND JEMEZ	} No. 50.
<i>v.</i>	
THE UNITED STATES <i>et al.</i>	

*Replication.*

These repliants, saving and reserving unto themselves all and all manner of advantages and exceptions to the manifold insufficiencies of said answer and the pleas in it contained, for replication thereunto say that they will prove their petition to be true, certain, and sufficient in law to be answered unto, and that said answer of defendants and said pleas in it contained are uncertain, untrue, and insufficient in this, to wit:

That, whilst their need of more pasture may have been or was a reason for making this grant, it is not true that their right to said property "was a permissive right or license or was subject to revocation," and they expressly deny that any attempt to revoke the same or any abandonment thereof was ever made, and these repliants deny that in the year 1815 Spain made a grant of this land to Luis Cabeza de Baca, and they say that if the same has been confirmed and patented by the United States it is but one of many instances in which, through error, mistake, and fraud, patents have been secured for junior grants against the lawful rights of senior grantees under complete and perfect grants, and, as the con-

22 firmation by the United States is only a quitclaim on the part of the United States, such junior grant or any action thereon is not a defence whereof the United States can now avail itself; that the sole and only defence which the United States can make under the laws and treaties of the United States is as to the legal validity of the repliants' grant and of their right to its confirmation, and they allege and aver, to their great regret, that this court is without jurisdiction to pass upon the relative merits of conflicting grants, and is therefore without jurisdiction to pass upon a defence by the United States resting solely upon such alleged conflict.

These repliants say it is untrue that said grant was ever denounced; that it is not true they made no claim for the confirmation of their grant, but, on the contrary, they allege and aver that they duly presented the same to the surveyor general under the provisions of the act of July 22, 1854.

And these repliants say that the whole of said answer is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto,

confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said petition they have already prayed.

Filed July 21, 1893.

GEO. HILL HOWARD,  
JEFFRIES AND EARLE,  
*Attorneys for Repliants.*

[Endorsed:] Zia, Santa Ana, &c. Replication.

23 In the United States Court of Private Land Claims in and for the Territory of New Mexico, Sitting at Santa Fé.

THE PUEBLOS OF ZIA, SANTA ANA, and JEMEZ, Plaintiffs,

*versus*

THE UNITED STATES OF AMERICA, PEDRO PEREA, *et al.*, Defendants. }

Now come the said plaintiffs for the purpose of correcting a clerical error in the prayer of their petition hitherto filed in the matter of the Ojo Espiritu Santo Valley grant, cause No. 50, and amend the prayer of the same by striking out the words "Luis Jaramilla" on the second line of the said prayer and inserting instead thereof the words "the Ojo Espiritu Santo Valley grant," and the said plaintiffs, the respectful petitioners in the said cause, pray the court that the said amendment be allowed without prejudice to them upon account of the said clerical error; and they humbly pray, &c.

GEO. HILL HOWARD,  
JEFFRIES AND EARLE,  
*Counsel for Petitioners.*

Filed January 15th, 1892.

24 [Endorsed:] In United States court of private land claims. No. 50, file 11. The Pueblos of Zia, Santa Ana, and Jemez, plaintiff, *vs.* The United States of America *et al.*, def'ts. Amendment to prayer of petitioners. Filed January 15, '92. James H. Reeder, cl'k, by Ireneo L. Chaves, d'p'ty. Geo. Hill Howard, Jeffries and Earle, counsel for petitioners.

25 UNITED STATES OF AMERICA, 88:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

PUEBLOS OF ZIA, SANTA ANA, and JEMEZ }  
*vs.* } No. 50.  
THE UNITED STATES *et al.*

Comes now the Atlantic and Pacific Railroad Company, upon leave first had and granted to intervene in the above-entitled cause, and for its answer shows—

That it is — corporation duly incorporated under an act of Congress approved July 27th, 1866.

That on or about the 12th day of March, 1872, it duly and legally filed with the Commissioner of the General Land Office of the United States a map of definite location of its line of road, and thereafter, in the year 1881, it constructed its line of railroad through the counties of Bernalillo and Valencia, in the Territory of New Mexico.

That by the said act of Congress creating said co-poration it was granted *that* the odd-numbered sections of public land in the Territory of New Mexico within a distance of forty miles on each side of the line of railroad constructed by it, together with a strip of land 200 feet in width, as and for its right of way, and also an indemnity strip of 10 miles adjoining said forty miles, and that the land the title to which plaintiffs seek by this action to have confirmed lies within said fifty-miles limit.

That at the time of filing its map of definite location as aforesaid no proceedings were had anywhere or in any way preventing  
 26 the rights granted to this defendant by said act of Congress from attaching to any of the real estate (to which they could attach under the terms of its said grant) described by plaintiffs' petition.

That by virtue of the facts aforesaid said company became seized of the title to the odd-numbered sections embraced within the limits of the land described in said petition and which it is unable at this time more particularly to describe.

Therefore this defendant prays that the plaintiffs' petition be dismissed as to all of the odd-numbered sections above mentioned.

C. A. STERRY,

*Attorney for Atlantic & Pacific Railroad Co.*

(Here follows map marked p. 27.)

28

(TRANSLATION OF MUNIMENTS.)

*Testimonio.—Corrected.*

His excellency the governor and captain general :

I, Felipe Tafoya, lawyer of this town of Santa Fé, appear before your excellency in full legal form, for and in the name of Cristoval, Indian governor of the Pueblo of Zia, and Thomas, chief war captain of said pueblo, who come under appointment from their casique, and of the other inhabitants of their Republic, and, sir, in the name of the aforementioned, and of the community of the Pueblos of Santa Aña and of Jemez, do state that they, from their foundation, have considered as their pasture ground, in the vicinity of their said pueblos, a valley commonly called the Holy Ghost Spring, and that in some urgent cases, the same as is known, is used as a pasture ground for the horses of this royal garrison, and the said parties being aware that the said valley has had, in its vicinity, some applicants to acquire the same by grant, which will cause them very great injury, as they have considerable cattle, sheep, goats, and horses for the royal service, and not having any other place in which to

pasture them, particularly the people of the Pueblo of Zia, the greater part of whose fields are upland, and some of them in the glens of said valley, adjoining their said pueblo. In consideration of all of which, I ask and pray that your excellency, in the name of His Majesty, (whom may God preserve,) be pleased to declare said valley to be the legitimate pasture grounds and pastures of the pueblos, directing that the boundaries thereof be designated to them, that is, on the east, the pueblos aforesaid, on the west, the summits of the Puerco river, on the north, a place called the Ventana, where some Navajo Apaches reside, and on the south, the lands of the citizen settlers of said Puerco river, and, should your excellency order to be done as I have requested, the said parties, my clients, will receive grace with the justice which I ask, and declare in their name that this is not in dissimulation, and so forth.

FELIPE TAFOYA.

*Decree.*

TOWN OF SANTA FÉ, June 16, 1766.

Having seen the petition of the Republics of the three Pueblos of Zia, Santa Aña, and Jemez, of the Queres nation, all contiguous to the banks of the Santa Aña river, I do, in order to decide in justice, commission the chief alcalde of said pueblos, Bartolomé Fernandez, to the end that, having examined the boundaries which they mentioned as of the Holy Ghost Spring, where they state they pasture their stock and horses, he reports to me the leagues the same may embrace from north to south and from east to west, and whether the aforesaid three pueblos have the cattle, sheep, goats, and horses proportional to the boundaries asked for for their grazing, and also whether or not any citizen or citizens are damaged by said boundaries under any prior valid grant and possession held by them, which the said chief alcalde will perform with all possible veracity.

And I, Thomas Velez Cachupin, governor general of this kingdom, have so provided, ordered, and signed, with my two attending witnesses, in the absence of notaries, there being none in this government.

VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: JOSÉ MALDONADO.

*Report.*

In compliance with the order of his excellency Thomas Velez Cachupin, governor and captain general of this kingdom, in his foregoing decree of the sixteenth of June instant, I, Bartolomé Fernandez, chief alcalde and war captain of the pueblos of the Queres nation, proceeded to examine the lands asked for by the three  
 29 Pueblos of Jemez, Zia and Santa Aña, and the boundaries which they mention in their petition, and I find that they contain, from north to south, that is, from the stone ford, which is the boundary of the citizen settlers of the Puerco river, to the

Vintana, about eight leagues, somewhat more or less, and from east to west, that is, from the Pueblo of Zia, which is nearest to the lands asked for to the Puerco river, about six leagues, somewhat more or less, in which distance I know of no lands suitable for cultivation, the watering places being scanty and few, and they are only suitable for pasturing live stock, which is abundant at said pueblos, though the said three Republics have no other lands on which to sustain their stock, and it being, as it is true, that none of the aforementioned boundaries will injure any one holding or to hold possession of lands within the same, which proceedings I placed on record, signing the same with two attending witnesses, in the absence of notaries, there being none of any kind in this kingdom, town of Santa Fé, June, one thousand seven hundred and sixty-six.

BARTOLOMÉ FERNANDEZ.

Witness: JUAN MARIA ANTONIO RIVERA.

Witness: PEDRO PADILLA.

*Granting Decree.*

In the town of Santa Fé, on the sixth day of the month of August, one thousand seven hundred and sixty-six, I, Thomas Velez Cachupin, governor general of this Kingdom of New Mexico, in view of what is petitioned for by the three Pueblos of Santa Aña, Zia, and Jemez, of the Queres nation, and of the report which their chief alcalde, Bartolomé Fernandez, makes, that they have held said lands for their live stock, which at present is abundant, without having any other places in which to pasture them, except those referred to in their petition, together with the small watering places mentioned in said report, declared that I would grant, and I did grant, in the name of His Majesty (God preserve him,) the aforesaid lands for pasturing the stock and horses of the aforesaid three Pueblos of Santa Aña, Zia, and Jemez, with the boundaries, from north to south, from the place Ventana to the stone ford of the Puerco river, the boundaries also of the citizens of the place San Fernando of Nuestra Señora de la Luz; and from east to west, from the Pueblo of Zia to the said Puerco river, the eastern edge, the whole of the valley of the Holy Ghost Spring being embraced within the center and within the boundaries of this grant, with the condition and stipulation: that in case of necessity the horses of this royal garrison of Santa Fé may, and shall be, kept in said valley, the same being a place where they have been accustomed to graze; wherefore the aforementioned three pueblos are to place no obstacle in the way, nor claim damage therefor; and the aforementioned boundaries being for the future considered those of the aforementioned three pueblos, they will hold the same with legitimate title under this royal grant, so that they be not molested by any Spanish citizen or citizens, taking their stock thereupon, deeming the pasturage to be common. And I direct the chief alcalde, Bartolomé Fernandez, to go and give to the aforementioned three pueblos royal possession of this grant, and the boundaries therein

set forth, taking with him the justices and seniors of each one of them, and placing his proceedings on record, following this my granting decree, which he will return to me, in order to furnish to each pueblo the proper testimonio of the whole, and deposit the original in the archives of this government, where it shall remain.

30 And I so provided, granted, ordered, and signed, acting with two attending witnesses in the absence of notaries, there being none of any kind in this jurisdiction.

THOMAS VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: DOMINGO SABADIA.

*Possession.*

In compliance with the directions of his excellency Thomas Velez Cachupin, governor and captain general of this kingdom of New Mexico, I, Bartolomé Fernandez, chief alcalde and war captain of the pueblos of the Queres nation, proceeded to the aforementioned pueblos, and, in company with the governors, casiques, and other authorities of the Pueblos of Santa Aña, Zia, and Jemez, proceeded to the lands asked for by the natives of the said three republics mentioned by his excellency the governor aforesaid, in the name of his majesty, as appears by the foregoing grant, and, summoning the contiguous land-holders, who are the residents of the place San Fernando, of the Puerco river, and the lieutenants Juan Bautista Montañó, Agustin Gallego, and Tomas Gurule, being present, I took by the hand the aforesaid governors, who are Cristoval Naspona, and Cristoval Chiguigui, Pedro Chite; Casiques Sebastian, Lazaro, Juan Antonio; War Captains Agustin, Tomas, Juan Domingo, and the other magistrates, and conducted them over said land, and they shouted long life to the king our sovereign, whom may God preserve, and they cast stones, and pulled up grass, in sign of possession, which I gave them, and which they received quietly and peaceably, without any opposition whatever, under the conditions mentioned in the aforesaid grant, and with the boundaries therein set forth, which are from north to south from the Ventana to the stone ford, and from east to west from the Pueblo of Zia to the eastern edge of the Puerco river. And that it may so appear, I, the aforesaid chief alcalde, signed this, with two attending witnesses, acting as special justice, in the absence of notaries, there being none in this jurisdiction, at this place, the Spring of the Holy Ghost, on the twenty-eighth day of September, in the year one thousand seven hundred and sixty-six. I certify.

BARTOLOMÉ FERNANDEZ.

Witness: MIGUEL TENORIO DE ALBA.

Witness: PEDRO GARCIA.

It agrees with the original on file in the archives of this government, from whence, I, Thomas Velez Cachupin, governor general

of this kingdom of New Mexico, ordered the same to be copied. It is true and corrected, and there were present my attending witnesses, with whom I act in the absence of notaries, there being none in this jurisdiction. In testimony of truth.

THOMAS VELEZ CACHUPIN.

Witness: CARLOS FERNANDEZ.

Witness: DOMINGO LABADIA.

The foregoing translation, made by me, is a correct rendering from the original in Spanish, to the best of my knowledge and belief.

SAM'L ELLISON.

Sworn to and subscribed before me this July 25, 1873.

JAMES K. PROUDFIT,

*Surveyor General.*

31

SURVEYOR GENERAL'S OFFICE,  
TRANSLATOR'S DEPARTMENT, SANTA FÉ,  
NEW MEXICO, July 25, 1873.

The foregoing translation having been by me compared with its original in Spanish, and found correct, is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

*Testimony of Witnesses.*

Zia, Santa Aña, and Jemez Pueblos.

JUAN CASADOS having been summoned by and before the surveyor general to testify in this claim of said pueblos for land, and being present, and duly sworn by the surveyor general, on his oath declares:

Question by SAMUEL ELLISON, as attorney for claimants: What is your name, age, residence, and occupation?

Answer. My name is Juan Casados. My age is sixty-seven years. My residence is at the Cañon de Jemez; and my occupation is laborer and shepherd. I was born in the Cañon de Jemez, and have always lived there.

Question. Are you acquainted with the Espíritu Santo grant of land; and if so, please state its locality, and who are the reputed owners of the same.

Answer. I know a tract of land so called, situated in the county the Pueblo of Jemez is in, and east of the Puerco river, and west of the Jemez mountain. The land, I understand, was granted by the king for pastoral purposes to the Pueblos of Zia, Santa Aña, and Jemez, and neighboring white people of San Ysidro and other adjacent settlements. I have not seen the grant, and cannot read, but have always understood this to be the case. The natives of the three pueblos named have always had live stock grazing upon this tract of the Espíritu Santo, except during hostilities with the Navajo Indians, when the stock was removed to places of greater safety.

Question. How far do you reside from the spring of the Espiritu Santo?

Answer. About five or six leagues; but not upon the tract, which is beyond the mountain from where I reside.

Question. Do you know the boundaries of the tract in question? And if so, state them; and also state how you know them.

Answer. I know the boundaries, as I have always heard them mentioned by old persons of the vicinity, and I have thus always understood them to be from the Ventana, on the north, to the Vadito de Piedra, on the south, and from the pueblos on the east, to the Puerco river on the west.

Question by the surveyor general: Have you ever heard that the land in question, or any part of it, was claimed or occupied by any other claimant?

Answer. I have never heard of any such claimant. One Diego Baca has resided at the spring for the last three or four years, and has been cultivating land and has some live stock there, but under what right he occupies I do not know.

Question. Do you know of any mines or minerals or coal upon this tract of land?

Answer. I have never seen anything of the kind.

32 Question. Have you any, or have your ancestors had any, interest in this land of the Espiritu Santo?

Answer. I have no other interest, and I believe my ancestors had no other interest in it, than the right to pasture our animals upon the tract.

his  
JUAN x CASADOS.  
mark.

Sworn to and subscribed before me, this July 25, 1873.

JAMES K. PROUDFIT,  
*Surveyor General.*

JOSE RUMOLDO CASADOS, having been summoned as aforesaid, and being also present, and duly sworn by the surveyor general, on his oath declares:

Question by Mr. ELLISON. What is your name, age, occupation, and residence?

Answer. My name is José Rumoldo Casados; my age is 63 years; my occupation is laborer and shepherd, and my residence is Cañon de Jemez, where I have resided all my life. I am a brother of Juan Casados, the witness who has just testified.

Question. Are you acquainted with the tract of land known as the Espiritu Santo grant, in Santa Aña county? If so, please state what you know about it.

Answer. I know such a tract there, bounded on the north by the high mesa of the Ventana, and on the south by the Vadito de la Piedra, on the Puerco river, where the Ceballeta and Jemez road crosses, and on the west, as I have been informed, by the Puerco river, and on the east by the top of the Jemez mountain. The re-

puted owners of the tract are the three Pueblos of Zia, Santa Aña, and Jemez. The only party now in possession of the land, so far as I know, is one Diego Baca, who has been for the last three years residing with his family at the spring of Espiritu Santo upon the tract, at which place he has a ranch and live stock, and has cultivated land. I do not know under what right he occupies the place. The Indians of the three pueblos named have always pastured their stock upon the tract, except when the Navajo Indians were at war, and are now pasturing stock upon the land. I do not know of any adverse claim for the land. I do not know of any mines, or minerals, or coal upon the land. I have no interest whatever in this claim for the land in question.

his  
 JOSÉ R. x CASADOS.  
 mark.

Sworn to and subscribed before me this July 25, 1873.

JAMES K. PROUDFIT,  
*Surveyor General.*

### *Decision of Claim.*

#### Opinion of surveyor general.

This claim for land is brought before me in behalf of the Indian inhabitants of the Pueblos of Zia, Santa Aña, and Jemez, under the eighth article of the treaty of Guadalupe Hidalgo and the act of Congress approved July 22, 1854, establishing this office.

It appears from the record in this case that the pueblos named, by proper authorities and agent, applied to Don Tomas Velez Cachupin for a grant of land, (petition without date;) that  
 33      said Cachupin, then being governor and captain general of the province of New Mexico, at that time one of the colonial possessions of the Spanish Crown, did, on the sixteenth day of June, 1766, order and appoint one Bartolomé Fernandez, chief alcalde of the said pueblos, to investigate and report to him as to the propriety of making the grant; that in said month of June, 1766, said alcalde examined the matter, and reported that there was no objection to making the concession; that on the 6th day of August, 1766, Governor Cachupin made the grant, reserving only the privilege of pasturing on the lands the horses of the royal garrison of Santa Fé; that he ordered said Alcalde Fernandez to place the people of said Pueblos of Zia, Santa Aña, and Jemez, in juridical possession of the land, and that said alcalde did so, as appears from his report of September 28, 1766.

From the language of the granting decree of Governor Cachupin, it is evident that he intended to extend the boundaries of the pueblo lands so as to include the grant now under examination. The grants of the original pueblo lands were made in 1689, and have been confirmed by Congress. A translation of the papers in this case was made in this office, probably in 1856, but for some reason, probably, as I am informed, on account of some fear or disagree-

ment among the Indians, it was withdrawn and not prosecuted, and but for this reason no doubt these lands would have been confirmed when the others were.

I am of opinion that the Indians show an absolute grant and full possession under it, and that Congress ought to confirm the same, which I respectfully recommend.

I transmit triplicate copies of the record.

JAMES K. PROUDFIT,

*United States Surveyor General.*

United States surveyor general's office, Santa Fé, N. Mex., February 2, 1874.

*Authentication of Transcript.*

SURVEYOR GENERAL'S OFFICE.

SANTA FÉ, N. MEX., *February 25, 1874.*

The foregoing is a correct transcript of the papers on file in this office constituting Indian pueblo claim T, in the name of the Pueblos of Zia, Santa Aña, and Jemez.

JAMES K. PROUDFIT,

*United States Surveyor General.*

34

JULY 21ST, 1893.

The above-entitled cause was set for trial on August 3rd, 1893.

AUGUST 3RD, 1893.

Come now the plaintiffs in the above-entitled cause, in person and by their attorneys, Geo. Hill Howard, Esq., Jeffries and Earle, Esqs., and the defendant by Matt. G. Reynolds, Esq., United States attorney, and T. B. Catron appearing for Jacobo Perea, Pedro Perea, and Mariano S. Otero, defendants to the petition of the Pueblos of Zia, Santa Ana, and Jemez.

This cause coming on for trial on the petition of the plaintiffs and the several answers filed herein, documentary and oral proof was presented and examined.

AUGUST 4TH, 1893.

The above-entitled cause coming on to be further heard, there appeared the United States attorney, Matt. G. Reynolds, Esq., for and on behalf of the defendant, and Geo. Hill Howard and Messrs. Jeffries and Earle for and on behalf of the petitioners in the cause.

Further oral and documentary proof was introduced ; after which the court took a recess until two o'clock p. m.

The court again in session at two o'clock p. m.

The above-entitled cause coming on to be further heard, there appeared all the attorneys in the cause.

Further oral and documentary proof was introduced ; after which the court suspended further action herein until tomorrow.

AUGUST 5TH, 1893.

The above-entitled cause having come on to be further heard, there appeared the United States attorney and the attorneys for plaintiffs.

Further oral and documentary proof was introduced in the cause.

35

AUGUST 7TH, 1893.

The above-entitled cause coming on to be further heard, there appeared the United States attorney and the attorneys for plaintiffs.

Further proof in the cause was introduced.

AUGUST 8TH, 1893.

The above-entitled cause coming on to be further heard, there appeared the United States attorney and the counsel for plaintiffs.

After full arguments by counsel the cause was submitted to the court, and the court, not being sufficiently advised in the premises, took this cause under advisement.

AUGUST 10TH, 1893.

Come now the petitioners in the above-entitled cause, by their attorneys, Messrs. Geo. Hill Howard, Jeffries and Earle, and the defendants by Matt. G. Reynolds, Esq., United States attorney, T. B. Catron, Esq., appearing for Pedro Perea, Jacobo Perea, and M. S. Otero; and the cause having been submitted at a former day of the court, and the court being fully advised in the premises, it is considered by the court the grant rejected, and that the petition of the petitioners in the cause be, and the same is hereby, dismissed, the grant not being in fee, but a license to pasture.

And it is so ordered.

AUGUST 18TH, 1893.

Now come the petitioners, by their attorneys of record, and pray that an appeal be allowed them from the decree herein dismissing their petition.

August 21st, 1893.

GEO. HILL HOWARD,  
JEFFRIES AND EARLE,  
*Attorneys for Petitioners.*

Appeal allowed.

JOSEPH R. REED,  
*Chief Justice.*

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Office of Thomas B. Catron, attorney-at-law.

SANTA FE, N. M., Oct. 8, 1873.

Gen'l Proudfit.

DEAR SIR: I have just this minute been informed that you have promised Don Tomas C. de Baca or some others that if they, Bacas, sell the grant of "Ojo Espiritu Santo" that you will reject the grant of the 3 Indian pueblos. I have advised the Indians in this matter, and because they are wards of the Government I have advised them

what course to pursue, knowing all the grant conflicts with the Bacas' "Ojo Espiritu Santo."

Mr. Tom Baca is the author for your promise to do this. I do not believe that you ever made such a promise, but, as I have been requested by the Attorney General to take steps to secure to those Indians—*i. e.*, Pueblos—their lands from trespassers and settlers, etc., I feel that it is my duty to look after their title and to call your attention to this fact. This grant, to my certain knowledge, has been proven up since some time in July, and I cannot see that the surveyor general has any right to accept or reject any grant as dependent upon the sale or failure to sell any grant which may conflict with it. You are simply to pass upon the apparent validity of title and not upon which of two grants may be the superior. If you find grant papers to be correct, deed in due form, and proper occupation, etc., without any suspicion, you are bound to approve, without reference to any other grant, or reject the same.

Knowing your opinion on these points, I feel certain that Tomas Baca has misrepresented you or you have been misrepresented to him by some one else.

37 I have therefore to ask that you at once act upon the title of the Indians.

I have not seen Mr. Baca in person, but Jose Leandro Perea, who is interested in "Espiritu Santo," tells me that Baca informed him that you had promised to reject the grant dependent upon the sale or failure to sell. I do not see any interest that could prompt you to such course, and for this reason and from my confidence in your entire integrity I reassert that I do not believe this statement.

But, as I feel that I am to look after these matters of the pueblos under my instructions, I am constrained to at once ask that you act on the Indian pueblo grant, and would be glad to hear from you on this question by return mail.

Very respectfully, your obedient servant,

T. B. CATRON.

38 UNITED STATES SURVEYOR GENERAL'S OFFICE,  
SANTA FÉ, N. M., Oct. 10, 1873.

Hon. T. B. Catron.

DEAR SIR: You may rest assured that there is not a word of truth in the statements, accusations, or whatever they may be called of which you speak in your favor of the 8th inst. I never spoke to Don T. de Baca about his grant, nor did I ever speak to Perea at all, that I know of. I have given no opinion of any sort, either contingent or otherwise, in regard to the pueblo claim for the Ojo del Espiritu grant except to Mr. Sam'l Ellison, whom I had supposed, until I received your letter, was sole counsel in the case; nor should I give one contingent upon anything except upon what I believed to be law and evidence; certainly, not upon the private transactions of any person. To Mr. Ellison I, this morning, since receiving your letter, gave a detailed verbal statement of all I know of or had known about the Baca grant or its attempted sale. The parties who were here on that business called at my office to

see the papers in the pueblo claim, but received no intimation of opinion nor promise of any, either direct or indirect. I understood them to say that if they bought they should expect to be defended in the title by Baca and Perea, but only overheard that remark.

I am free to say, however, to you, now that I learn you are counsel in the case, that the Indian claim is not entirely clear. I had never carefully examined the papers in either case until this morning, and especially had never looked over this Baca claim, 39 and I find, to my surprise, that a grant intervened between the Indians and Baca to one Ortiz, and that Baca obtained it by denouncement; but there is no mention made of the Indian claim.

Then the question naturally arises, why didn't they claim this outlying when they did their other or regular pueblo lands? Santo Domingo, San Felipe, Laguna, and others did; why didn't Zia, Jemez, and Santa Ana until May 22, 1873? And, then, the United States have transferred their title to Baca—have I any jurisdiction left?

All these things, as well as some others, I have talked with Mr. Ellison about. I simply desire to do what is right, legal, and just to all concerned, Indians included.

I am not well today. I don't know that I have written as clearly and properly as I ought, and should not have tried it but for your urgency, as the rumor you speak — I certainly should not have hurried about denying on any other account.

I am much obliged for your good opinion and hope to continue to deserve it, notwithstanding the embarrassments that my official duties at times subject me to.

Very respectfully, your obedient servant,

J. K. PROUDFIT,  
*Surveyor General.*

40 *Grant—Heirs of Luis Maria C. de Baca. Amendment of Petition, Document No. 4.*

TERRITORY OF NEW MEXICO, )  
County of Santa Fe. )

To the Hon. A. P. Wilbar, surveyor general of the Territory of New Mexico, under the act of Congress approved July 22, 1854:

Your petitioners, the surviving heirs-at-law of one Luis Maria Cabeza de Baca, deceased, would respectfully state to you that on the 23d day of May, 1815, the said Baca presented his petition to the governor of the province of New Mexico asking for a grant of land to himself and children at a place called Ojo del Espiritu Santo, situate in the county of Santa Ana, Territory of New Mexico. On the 24th day of May, 1815, the said grant was duly made of said land by the governor of said province, and on the 13th day of June 1815, the said Baca was duly placed in possession of the lands so granted, having for their boundaries the following points: On the east, the summit of the Jemez mountain; on the west, the

Puerco river and the point of the Prieto table-land; on the north, the table-land commonly called La Ventana; on the south, the cañon of La Querencia and the boundary of the farm of Don Antonio Armenta; all of which facts will more fully appear by reference to a copy of said petition, grant, and possession, hereby made a part of this petition, marked as Exhibit "G" herein.

Your petitioners further state that the said landmarks and boundaries are well known and easily pointed out; but inasmuch as no survey of said lands has ever been made the quantity of land included in said boundaries is not known to your petitioners.

41 Your petitioners further state that the said Luis Maria Cabeza de Baca in his lifetime occupied, cultivated, and lived upon and put valuable improvements upon said lands, and up to the time of his death, about the year 1830, continued to possess said lands without any other person claiming them, nor up to this time do your petitioners know of any adverse title to said lands.

Your petitioners further state that the said Luis Maria Cabeza de Baca, a short time before his death, was driven away from said lands by the hostility of the Navajo Indians, and it has not been since occupied on account of its exposure to the hostility of said Indians, who have been almost constantly at war, and which has prevented its occupancy by your petitioners. Your petitioners further state that said lands are not now in the actual possession of any one, nor are they claimed by any persons but your petitioners, who claimed said lands as theirs absolutely by virtue of said grant as the heirs-at-law of the said Luis Maria Cabeza de Baca. Your petitioners further state that at the death of the said Luis Cabeza de Baca he left him surviving as his heirs the following children, to wit: Luis Baca, Prudencio Baca, Jesus Baca, Sr., Jesus Baca, Jr., Felipe Baca, Domingo Baca, Manuel Baca, Josefa Baca y Salas, Josefa Baca y Sanchez, Juan Antonio Baca, Jose Baca, Jose Miguel Baca, Ramon Baca, Matio Baca, Guadalupe Baca, Altagracia Baca, Rosa Baca, Juana Puala Baca.

The said Juan Antonio Baca died leaving as his heirs him surviving the following children and heirs: Jesus Maria Baca, Francisco Tomas Baca, Encarnacion Baca, Jose Baca, Josefa Baca, Altagracia Baca, Nicolas Baca, Tomas Baca, Trinidad Baca, Cesaria Baca, Domingo Baca, Guadalupe Baca.

42 The said Jose Miguel Baca died leaving the following children and heirs him surviving: Diego Baca, Quirina Baca, Romado Baca, Guadalupe Baca, Paulina Baca, and Martina Baca.

The said Ramon Baca died leaving him surviving the following child and heir: Ignacio Baca.

The said Matio Baca died leaving him surviving the following children and heirs: Luis Baca, Alejandro Baca, Juan de Dios Baca, Martin Baca.

The said Jose Baca died leaving him surviving the following children and heirs: Antonio Baca, Felipe Baca, Jose Maria Baca, Francisco Baca, Fernando Baca, Polonia Baca.

Your petitioners further state that the above list contains the

names of all the living children and grandchildren of the said Luis Maria Cabeza de Baca.

Your petitioners further states that Cesaria Baca, daughter of Juan Antonio Baca, is dead and left her surviving the following children and heirs: Francisco Silva, Isabel Silva, Jesus Maria Silva, Benito Silva, Balentin Silva, and Manuel Silva.

The said Domingo Baca, son of the said Juan Antonio Baca, is dead, leaving him surviving the following children and heirs: Ysabel Baca, David Baca, Ulalia Baca, Santiago Baca, and Adaleida Baca.

The said Guadalupe Baca, daughter of said Luis Maria Cabeza de Baca, is dead, leaving her surviving the following children and heirs: Maria Trujillo, Antonio Trujillo, Andres Trujillo, Juana Trujillo, and Feliciana Trujillo.

Your petitioners further state that Rosa Baca, daughter of Luis Cabeza de Baca, died leaving the following children and heirs: Francisco Baca, Dolores Baca, Josefa Salas.

43 Your petitioners further state that Juana Paula Baca, daughter of Luis Maria C. de Baca, died leaving the following children and heirs: Antonio Garcia, Francisco Garcia, Inez Garcia, Ana Maria Garcia, and Josefa Garcia.

Your petitioners further state that Feliciana Trujillo, daughter of Guadalupe Baca, died leaving the following children and heirs her surviving: Josefa Lopez, Marto Lopez, Altigracia Lopez.

Your petitioners further state that all of said heirs are residents of the Territory of New Mexico and desire to occupy and cultivate said land as soon as their title is confirmed and they can do so with safety from the hostility of the Navajo Indians, now in a state of war.

Your petitioners further state that they have an absolute title in fee to said lands and ask that the same be confirmed under the act of July 22, 1854, in order that they may obtain a legal title thereto in conformity with the provisions of said act.

All of which is respectfully submitted.

JOHN S. WATTS,  
*Attorney for Petitioners.*

44 *Grant—Heirs of Luis Maria C. de Baca. Testimony, Document No. 5.*

Deposition of Jose Francisco Sales, taken in claim 36.

THE HEIRS OF LUIS MARIA CABEZA DE BACA }  
vs. }  
THE UNITED STATES.

JOSE FRANCISCO SALES, being first duly sworn, upon his oath states:

Q. Where do you reside? Are you in any way related to the claimants or have you any interest in this claim?

A. I live in Pena Blanca. I am not related to the claimants nor have I any interest in the claim.

Q. Did you know Luis Maria Cabeza de Baca during his lifetime?

A. I did.

Q. When did he die?

A. I saw him die and was present when he was buried, but do not recollect exactly how long ago it was, but think it was in the year 1827.

Q. Please examine the list of children, grandchildren, and great-grandchildren set forth in the petition in this case and state who they are.

45 A. I have examined the list set forth in said petition, and it is a correct list of the names of all the children of Luis Maria Cabeza de Baca now living; also of the heirs of those that are dead.

Q. Where do said heirs reside?

A. In New Mexico.

Q. Are you acquainted with a grant of land made to Luis Maria Cabeza de Baca called Ojo del Espiritu Santo? And, if so, state if it was ever occupied, cultivated, and improved by him in his lifetime; and, if so, how long and for what cause the occupancy was abandoned.

A. I am acquainted with said grant of land. It was occupied for about fifteen years by Luis Maria Cabeza de Baca, during which time a house and corrals were built upon it and the lands extensively cultivated during the time he lived there. He was compelled to leave it on account of the hostility of the Navajo Indians. I remained there during about fifteen years while Don Luis Maria C. de Baca was living on said grant and after his death.

Q. State if it is occupied at present or not; and, if not occupied, why not.

A. It is still unoccupied. Its occupancy would be dangerous on account of the continued hostility of the Navajos. Attempts  
46 were frequently made to settle there, but were unsuccessful on account of the Indians.

Q. What number of animals did he have on said grant during his residence there?

A. The number of mares, horses, and cattle which he had there was about eight hundred.

Q. Have you ever heard of any other person claiming said lands but the heirs of Luis Maria C. de Baca?

A. It never was claimed by any person but the said heirs.

Q. When Don Luis Maria C. de Baca went there, was there any person living upon the grant?

A. It was several leagues beyond Jemez and unoccupied up to the time he went there with his family and hired men.

JOSE FRANCISCO <sup>his</sup> x SALES.  
mark.

Witnesses:

J. HOWE WATTS.  
THOMAS MEANS.

Sworn and subscribed before me this 23d day of October, A. D. 1860.

A. P. WILBAR,  
*Surveyor General of New Mexico.*

MANUEL HURTADO, being first duly sworn, upon his oath states:

Q. Where do you reside? Are you related to the heirs of Luis Maria C. de Baca or interested in this claim?

47 A. I live in the county of Santa Ana. I am not related to the heirs nor interested in the claim.

Q. Do you know the place called Ojo del Espiritu Santo; and, if so, who owned and lived upon it?

A. I know the place; it was owned by Don Luis Maria Cabeza de Baca, and was resided upon by him until he was driven away by the Navajo Indians, about the year 1816 or 1817. I went and assisted in removing him and his family and what remained of his stock from that place. He remained there a considerable length of time, but what number of years I cannot state. After the death of Don Luis Maria C. de Baca it was occupied by his heirs until they were compelled to leave it on account of the hostility of the Indians.

(By the SURVEYOR GENERAL:)

Q. Did you know personally the heirs of Luis Maria Cabeza de Baca, who occupied it after his death?

A. I did, and my son-in-law went there with them with their flocks and herds.

(By Same:)

Q. Are the names mentioned in the petition by the attorney, J. S. Watts, familiar to you, and do you know them?

A. I do know them, and the names mentioned in the petition are correct.

MANUEL <sup>his</sup> x HURTADO.  
mark.

Witnesses:

J. HOWE WATTS.  
THOMAS MEANS.

48 Sworn to and subscribed before me this 23d day of October, A. D. 1860.

A. P. WILBAR,  
*Surveyor General of New Mexico.*

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50 In the Court of Private Land Claims, Santa Fé District,  
August Term, 189-.

PUEBLOS OF ZIA, SANTA ANA, & JEMEZ, Plaintiffs, }  
vs. } No. 50.  
THE UNITED STATES and Others, Defendants. }

*Transcript.*

Appearances: Wm. E. Earle, Esq., and Geo. H. Howard, Esq.,  
for plaintiffs; Matt. G. Reynolds, for United States; T. B. Catron,  
Esq., for other defendants.

Trial commenced August 3rd, 1893.

Mr. EARLE: I shall ask to have identified all the papers in the  
surveyor general's office.

LORENZO LOBATO, sworn as a witness on behalf of plaintiffs, testified, in Spanish, as follows:

Examination by Mr. HOWARD:

Q. What is your name?

A. Lorenzo Lobato.

Q. What is your age and residence?

A. I do not know; I live at Zia.

Q. Where is Zia?

51 A. It is somewhat from the Mesa Blanca.

Q. Is it in New Mexico?

A. I do not know.

Q. Is it in this country?

A. I do not understand all this.

Q. Do you know in what county?

A. I do not know; I do not understand.

Q. How far is the Pueblo of Zia from the town of Bernallio?

A. It is not far.

Q. How far; how many leagues?

A. Maybe two.

Q. Are you an official of the Pueblo of Zia?

A. Yes.

Q. What official?

A. Governor.

Q. Have you any documents of and concerning the lands near Zia?

A. Yes, sir.

Q. Have you any title to the lands lying west of Zia?

A. Yes, sir.

Q. Where is it?

(Witness produces paper, hereafter marked Plaintiffs' Exhibit "B.")

Q. How long have you had this document?

A. Always.

Q. You mean you or your pueblo?

A. Yes.

Q. Pueblo?

A. Yes.

Q. The pueblo has had it always?

52 A. Yes.

Q. How do you know the pueblo has always had it?

A. It has it forever; it has that grant forever.

Mr. HOWARD: I offer the original testimonio given to the Pueblo of Zia; offer it in evidence as Exhibit "B" (for plaintiffs).

Cross-examination by Mr. CATRON:

Q. How long have you been governor?

A. This year.

Q. In what year were you born?

A. I do not know.

Q. Are you thirty years of age?

A. I do not know. We do not count years at the pueblo.

Q. Do you know how to read and write?

A. No, sir.

Q. How long have you had this paper in your possession (referring to Plaintiffs' Exhibit "B")?

A. It may be forty years, more or less.

Q. Have you had that paper in your possession—you yourself—for forty years?

A. (No reply.)

Q. Didn't you get this paper this year, when you were made governor?

A. Yes.

Q. And that is the first time you ever had it?

A. Yes.

Re-examination by Mr. HOWARD:

Q. How do you keep the time—of years?

A. I do not understand.

Q. Do you keep account of moons?

53 A. Yes, sir.

Q. How many moons is it since you had this paper?

A. I do not know.

Recross-examination by Mr. CATRON:

Q. How many moons since you were born?

A. I do not know how many.

Witness excused.

JOSE MIGUEL VIGIL, sworn as a witness on behalf of plaintiffs, testified in Spanish as follows:

After being sworn the first time witness was asked by Mr. Catron:

Q. Do you know what that gentleman (the official interpreter) has just said to you?

A. Yes, sir.

Q. What was it?

A. He asked me what we have known from the ancients.

Witness resworn and direct examination by Mr. HOWARD:

Q. Where do you live?

A. Jemez.

Q. What—the Pueblo of Jemez?

A. Yes.

Q. How old are you?

A. I do not know how old I am.

Q. More or less, how old are you?

A. Probably about seventy years, more or less.

Q. How long have you lived at the Pueblo of Jemez?

A. I do not know. We do not know, like you, what years are. I cannot state that.

Q. Were you there when you were a boy?

54

A. Yes.

Q. Have you remained there ever since?

A. Yes.

Q. Do you know anything about the Pueblos of Jemez, Zia, and Santa Ana having lands west of the pueblos?

A. Yes, sir.

Q. Who have they got the land from?

A. The three pueblos have it from the King of Mexico.

Q. Have you any documents of the Pueblo of Jemez for this land?

A. Yes, sir.

Q. Where is it?

A. At the Pueblo of Zia.

Q. Have you ever had any other one?

A. Yes, sir.

Q. Where is that?

A. It was lost.

Q. Was that document that you had—do you know this document that the Pueblos of Zia has?

A. Yes, sir.

Q. Do you recognize that document (handing witness Exhibit "B," before referred to)?

A. Yes, sir; that is it.

Q. How do you recognize it?

A. I know it because the King of Mexico gave it to us.

Q. How old were you when you first saw it?

A. Because I don't know what year; they were many. I was a young man then.

Q. Did the Pueblo of Jemez have a similar document to that?

Mr. REYNOLDS: Objected to as leading.

By the COURT: Objection sustained.

Q. What kind of a document did the Pueblo of Jemez have?

55

A. The document had been made out anciently during the conquest. I do not know when.

Q. Can you state what are the boundaries of this tract of land that you claim west of the pueblo?

A. Yes, sir.

Q. State them.

A. From the Pueblo of Jemez, the valley to the south.

Q. Which was the west boundary?

A. The hill to the Pueblo of Zia, and from the Pueblo of Zia to follow up to the Mesa de Zia. On the top of that mesa is an old pueblo, which is called Casa Raton. That is the boundary, and from the Casa Raton to the west, on the north bank of the Rio Puerco, on the north side, and then come to the Vallete de Piedra, and then cross the river to the place where there is a small mountain, Cerrito de Alezna, and from there to the north along the Rio Puerco, on the eastern side, to the north, crossing the place Salazar on the east side, and the place called Conehino, in a straight line,

to the small hill called Conchino to the north, straight to the Cerro Cabezon, and coming down to the Posta on the east side, and on the east side of the Rio Puerco, along the river, to the Ventana, and from the Ventana to the place that is called Apache Cave (Cueva Apache) it turned to the east and from the Torenas it turned to the Ojo del Espiritu Santo to the south, leading to the Canada de los Milpas, and then it went up to the Raton.

Q. Which is the eastern boundary that was now mentioned?

A. (No reply.)

Q. I ask you what is the eastern boundary.

A. It is at the place that is called Cerrito de Cabezon.

Mr. CATRON: This question is not about the boundaries they claim, nor do they undertake by the testimony of this witness to establish what they are, because the testimony of this witness  
56 does not conform to the claim set up.

Q. Are these Pueblos now in possession of this land?

A. Yes, sir.

Q. How long have they been in possession, as far as you know?

A. I do not know, as we do not understand these reckonings. I don't know how many years it is.

Q. Ever since you can remember has it been in the possession of these persons?

Mr. CATRON: Objected to as incompetent.

Question withdrawn.

Q. Were they in possession of these Pueblos when you were a boy?

Mr. CATRON: Objected to.

By the COURT: Objection overruled.

A. Yes.

Q. Do you know whether your grandfather was in possession of this land?

Mr. CATRON: Objected to.

By the COURT: Admitted subject to objection.

A. Yes.

Q. How do you know they were in possession?

A. From what our fathers and grandfathers say; that's how I know it.

Q. How do you know what your grandfather says?

A. Because our fathers and our grandfathers told us what had been given to us by the King of Mexico, and that's how I know it.

Mr. CATRON: Objected to as incompetent.

By the COURT: Objection overruled.

Q. How do you get the knowledge as to what has happened in the pueblo?

(No reply.)

57 (After some argument as to the object of the last question the court said: We understand that they have no written

language, and that tradition will have to be resorted to to a certain extent in proving this case.)

Cross-examination by Mr. CATRON :

Q. In what year were you born?

A. I do not know in what year I was born.

Q. Is there any Catholic church at Jemez?

A. Yes, sir.

Q. Were you baptized in that church?

A. Yes, sir.

Q. You have always had a priest there, have you not?

A. Yes.

Q. He speaks the Spanish language, don't he?

A. I do not know what his name is.

Q. He speaks to you in Spanish, does he not?

A. Yes, sir.

Q. You understand the Spanish language, do you not?

A. Yes, sir.

Q. And you have understood that many years?

A. Yes, sir.

Q. You have understood it ever since you were a boy, have you not?

A. Yes, sir.

Q. Can you read and write?

A. No.

Q. Can the Jemez Pueblo understand Spanish?

A. Yes, sir.

Q. And all the people in Zia do also, do they not?

58 A. Yes, sir; all of them.

Q. They have all spoken the Spanish language ever since you remember, have they not?

A. Yes, sir.

Q. And in Santa Ana they speak Spanish also, do they not?

A. Yes, sir.

Q. In talking to each other you speak in Spanish, don't you—one Pueblo with another?

A. Yes, sir.

Q. What did you say was the name of the mountain which was on the west side of the Puerco river?

A. Sierra Alezna.

Q. How far is that mountain from the Rio Puerco on the west?

A. It is near the Rio Puerco.

Q. Is it near San Mateo?

A. Yes, sir; it is a small alto; it is small in circumference; a small mountain.

Q. How long does it take you to go from that River Puerco to that mountain?

A. Half a day from the pueblo.

Q. What pueblo?

A. Jemez.

Q. Would you go in a gallop or in a walk?

A. Gallop.

Q. How many leagues is it from the Pueblo of Zemez to the Cerro Alezna?

A. I do not know how many leagues.

Q. Do you know what a league is?

A. No, sir.

Q. Do you know what a vara is?

59 A. Yes; I know that.

Q. If a league is five thousand varas, then you know what it is, don't you?

A. Yes, sir.

Q. Well, a league is five thousand varas—

A. Yes, sir.

Q. Now, how far is it from the Pueblo of Jemez to the Sierra Alezna, each league being five thousand varas?

A. Maybe three leagues.

Q. Now from the Pueblo of Jemez to the Espiritu Santo?

A. It is very near; starting in the morning immediately after breakfast, and we are down at the Ojo del Espiritu Santo.

Q. How many hours would it take you when you were a young man to walk from the pueblo to the Espiritu Santo?

A. In three hours a person gets there.

Q. Walking or running?

A. Walking and running.

Q. How long does it take him to go on horseback in a gallop?

A. Maybe one hour running.

Q. How long does it take him to go from the Ojo del Espiritu Santo to the Rio Puerco?

A. About the same time.

Q. And from the Rio Puerco to the Sierra Alezna how long does it take you?

A. Half a day; it is only a strip.

Q. How far is it from the Ventana to the Rocky ford (Vado de Piedra)?

A. Also only a strip.

Q. How far is it from the Ventana to the Vado de Piedra, then?

60 A. Maybe it is half a mile only.

Q. Do you know the place called the Mesa Prieta?

A. Yes, sir.

Q. What direction is the Vado de Piedra from the Mesa Prieta?

A. The Ojo del Espiritu Santo in the same straight direction.

Q. Ask him if he knows the place called the Mesa Prieta.

A. Yes, sir,

Q. In what direction is the Mesa Prieta from the Vado de Piedra?

A. To the north.

Q. Does he say the Vado de Piedra is to the north of the mesa?

A. Yes, sir.

Q. What direction, then, is the Ventana from the Mesa Preita?

- A. To the south, below.
- Q. How far is the Cabezon from the Espiritu del Santo spring?
- A. That is far.
- Q. How many leagues?
- A. Maybe it may be a league or less.
- Q. Which direction is the Cabezon from the Pueblo of Jemez?
- A. It is on the north.
- Q. How far is it from the Pueblo of Jemez to the Cabezon?
- A. Person starts from the Pueblo of Jemez and gets to the Cabezon at midday.
- Q. What is Cabezon?
- A. They call it Cerrito Cabezon.
- Q. Is there any town there called Cabezon?
- A. It is a small valley of the Indians.
- Q. Which runs furthest east—the Pueblo of Zia or Jemez?
- A. The Pueblo of Jemez.
- Q. How much further east?
- A. Maybe one league; maybe two miles, more or less.
- Q. Where are the cultivated lands of the Pueblo of Jemez;
- 61 on the west side, along the river?
- A. On the west side.
- Q. How close to the pueblo is it? Are these cultivated lands of the Pueblo of Jemez?
- A. Right near the pueblo.
- Q. How far is the farthest land which is cultivated by the Pueblo of Jemez from the church of San Ysidro?
- A. (No reply.)
- Q. How far from the church to the furthest lands which any of the people cultivate?
- A. A league only.
- Q. Do they all cultivate lands within their league?
- A. Yes, sir.
- Q. They do not cultivate any outside of their league, you say?
- A. No.
- Q. How large is the tract of land where the pueblo is situated?
- A. A league on each side.
- Q. And all the lands which are cultivated lie within that tract, do they?
- A. Yes, sir.
- Q. Do the people of Zia have any cultivated lands?
- A. Yes, sir.
- Q. Where are the cultivated lands with reference to their pueblo?
- A. To the west.
- Q. How close to the church of Zia?
- A. It is near the church.
- Q. How large is the tract of land which the Pueblo of Zia has in its place?
- A. The river is somewhat narrow; that is the reason that they cultivate some more?
- Q. Do all their lands lie close to the town of Zia?
- A. Yes, sir; near the town.

- Q. How close to the town?
- 62 A. It is near; about as far as from here to the plaza.
- Q. They had no lands cultivated outside of that distance?
- A. Yes; they have.
- Q. Where?
- A. On the west they have all their farms.
- Q. How far are all their farms, the furtherest of them, from the church?
- A. A league; because they have delivered to us one league.
- Q. All of their lands are within that league?
- A. Yes, sir.
- Q. And they don't cultivate any lands outside of that league?
- A. No, sir.
- Q. Never have?
- A. No, sir.
- Q. Have any of them lived outside of the league?
- A. Yes, sir.
- Q. Where?
- A. To the west.
- Q. How far from the church?
- A. One league.
- Q. They lived inside of the league, then?
- A. Yes, sir.
- Q. None of them have houses beyond the limits of the league?
- A. Yes, sir.
- Q. You mean they have nor have not?
- A. No, sir.
- Q. Now, where is the Pueblo of Santa Ana with respect to the Pueblos of Jemez and Zia?
- A. To the east.
- Q. How far from Jemez is the Pueblo of Santa Ana?
- A. It is one league or two leagues, probably.
- Q. How long does it take you to go from the Pueblo of Jemez to the Pueblo of Santa Ana?
- A. At eleven o'clock.
- 63 Q. Starting at what time?
- A. Going out early in the morning at Jemez, a person gets to Santa Ana at breakfast time.
- Q. How many hours?
- A. A person gets there in small time.
- Q. Do you mean on horseback or on foot?
- A. If a person goes on horseback he goes faster.
- Q. How much land have the people of Santa Ana at this place?
- A. I don't know; I don't know the place; I don't know them.
- Q. Have they any lands, cultivated lands, at any place outside of their league?
- A. Yes, sir; they have on the other side of the river.
- Q. Is not that land in their league?
- A. Yes, sir.
- Q. Is the Pueblo of Santa Ana situated on the Rio Grande?
- A. (No reply.)

Q. It is about forty miles from Jemez to Santa Ana?

A. Yes, sir; maybe that distance.

Q. Do you know how much a mile is?

A. No, sir.

Q. You don't know anything about distances?

A. Yes, sir.

Q. Have any of these Pueblos ever cultivated these lands within the limits of the grant that you recognized as being in the possession of the people of Zia?

A. No, sir.

Q. Have any of them ever had any houses on it?

A. No.

Q. In what way have they occupied it; just by claiming it?

A. Yes, sir.

Q. How many horses have the Pueblo of Jemez at present?

A. I do not know; they have many.

Q. Have the Pueblo of Jemez a hundred horses?

64 A. Maybe more.

Q. Have they a hundred and fifty?

A. Maybe about that many.

Q. Where do they keep their horses?

A. In the mountains.

Q. What mountains?

A. At the Pajarito mountain, or Cero Valliceto.

Q. Where is the Pajarito mountain?

A. On the west.

Q. On the west of what?

A. Jemez.

Q. How far west?

A. Near; about as far as from here to our church of Guadalupe here.

Q. About a half a mile?

A. Yes, sir; on the north.

Q. How far from the town of Jemez?

A. It is a league.

Q. Then it is inside of your league, is it?

A. Yes, sir.

Q. And the Pajarito is inside of your league?

A. Yes, sir.

Q. Where is the Potrero?

A. On the north.

Q. How far is it from the church of Jemez?

A. Maybe it is near a mile or one league, more or less.

Q. Is it also within the league of the pueblo?

A. Yes, sir.

Q. Then you have always kept your horses within the limits of the pueblo league—the people of Jemez?

A. Yes, sir; all the time.

Q. Have you any burros at that pueblo?

A. Yes, sir.

Q. How many burros are there belong to that pueblo?

A. There are many. There are probably fifty or more.

65 Q. They have always pastured them within the limits of the pueblo?

A. Yes, sir; the shep-ards keep them.

Q. You always have a herder for the horses and burros both?

A. Yes, sir.

Q. Have you any cattle?

A. Yes.

Q. How many horned animals have the people of Jemez?

A. I do not know how many. They have many.

Q. Have they got a hundred?

A. Probably.

Q. Is that about the number?

A. Yes, sir.

Q. They have always pastured them within the limits of the league?

A. Yes, sir.

Q. And they keep a herder over them?

A. Yes, sir; there is a herder for them.

Q. Do they have any goats or sheep?

A. No, sir.

Q. Then the only animals they have is horses, horned cattle, and burros?

A. Yes, sir.

Q. And these are always kept herded close to the pueblo, within the league?

A. Yes, sir.

Q. That has been the custom ever since you have had any knowledge of the pueblo?

A. Yes; always.

Q. They have never been allowed to run or pasture outside of the limits of their league?

A. Yes, sir.

Q. They have always been kept close into the pueblo on account of the danger of the Navajos?

66 A. Yes, sir.

Q. You have always kept a guard over them near the pueblo so that he could call the people if they come—if the Navajos come?

A. Yes, sir.

Q. And for the reason you kept them inside your league?

A. Yes, sir.

Q. And have always done so?

A. Yes, sir.

Q. And your father and grandfather told you that they did so during their time, didn't they?

A. Yes, sir; they told us that.

Q. They told you that had been the custom ever since the conquest?

A. Yes, sir.

Q. And that they had never pastured their cattle or animals in any other place except the league?

A. Yes, sir.

Q. Do the people of Zia have any cattle or horses or burros?

A. Yes, sir.

Q. How many horses?

A. I do not know how many; they have many.

Q. Do they have as many as the people of Jemez?

A. Probably.

Q. Have they as many horned cattle as the people of Jemez?

A. Probably more.

Q. Have they two hundred?

A. Probably.

Q. Any more than that?

A. Yes.

Q. How many more?

A. I do not know; they have many.

Q. Have they any burros?

67 A. Yes, sir.

Q. How many burros have they?

A. I do not know; they also have burros; they have many.

Q. About the same number as the people of Jemez have?

A. No more or less, probably.

Q. How far is the Pueblo of Jemez from the Pueblo of Zia?

A. It is a small distance also.

Q. Do you frequently go down to the Pueblo of Zia?

A. Yes, sir.

Q. Have *have* been in a habit of doing that all your life?

A. Yes, sir.

Q. You know, then, where the Pueblo of Zia have kept their horned cattle, horses, and burros ever since you have been a little boy?

A. Yes, sir.

Q. They have kept them within their league all the time?

A. Always.

Q. Never allowed them to get outside of their league?

A. No, sir.

Q. They have always kept their animals just as the people of Jemez have?

A. Yes, sir.

Q. And how close have they kept their animals herded into the church?

A. It is somewhat distant.

Q. But it is within its league?

A. Yes, sir.

Q. How many herders do the people of Jemez and Zia keep out with their herds every day?

A. Only one, each of them.

Q. How old were you when you first knew of the Pueblo of Zia?

A. That I cannot state, because we do not know anything about years.

Q. Were you half grown?

A. Yes, sir.

68 Q. When you first know of the Pueblo of Zia did they herd their cattle and burros within the limits of the league?

A. Yes, sir.

Q. They did not allow them to go outside of it when you first knew them?

A. No, sir.

Q. Did your father and grandfather tell you that had been the custom of the people of Jemez and Zia all the time?

A. Yes, sir.

Q. Have the people of Santa Ana got any cattle or borros?

A. Yes, sir; burros and horses.

Q. Where do they keep them?

A. They herd their horses on the field.

Q. Close of the Rio Grande?

A. Yes, sir.

Q. Way to the east of where Jemez and Zia are?

A. Yes, sir.

Q. They have always her-ed there ever since you have known them?

A. Yes, sir.

Q. And did your father and grandfather tell you that prior to that time they had always her-ed them upon the Rio Grande?

A. Yes, sir.

Q. Ever since the time of the conquest?

A. Yes, sir.

Q. Then from your own knowledge neither the Pueblos of Zia, Santa Ana, and Jemez have ever pastured their cattle outside of their leagues?

A. Yes, sir.

Q. They have always kept them inside of their leagues?

A. Yes, sir.

Q. And from what your fathers and grandfathers and ancestors told you that has always been the custom?

A. Yes, sir.

69 Q. None of the people of Jemez have ever cultivated or lived on any land outside of the league of Jemez?

A. Yes, sir.

Q. And it is also true that none of the people of Zia cultivated or lived on land outside of their league?

A. Yes, sir.

Q. That is, they have always been inside of the league?

A. Yes, sir.

Q. Never gone outside to take up land or to live?

A. No, sir.

Q. Nor have the people of the Pueblo of Santa Ana done that, have they?

A. Neither they.

Q. What is there on the land of the grant in question as to improvements?

A. I do not understand.

Q. What is the grant that we are now trying called?

A. The grant.

Q. Is it the grant of the three pueblos?

A. It is the grant to the three pueblos.

Q. Are there any houses on the grant of the three pueblos?

A. Yes, sir.

Q. Where are they?

A. At Jemez.

Q. Is Jemez within the limits of the grant of the three pueblos?

A. Yes, sir.

Q. Is Zia also in the limits?

A. Yes, sir.

Q. Is Santa Ana also within the limits of the grant to the three pueblos?

A. Yes, sir.

Q. Then the grant runs from the Rio Grande to the other side of the Rio Puerco?

A. Yes, sir.

70 Q. How far to the east of the Rio Grande does it extend?

A. I do not know how far.

Q. Does it extend to the Pecos?

A. No, sir.

Q. Don't the people of Pecos live there now?

A. No.

Q. Don't the remains of the Pueblo of Pecos live at Jemez?

A. Yes; they are at Jemez.

Q. Have you not extended your grant over so as to take in the Pueblo of Pecos also—does your grant extend clear over to the Pecos river?

A. Yes, sir.

Q. And the Pueblo of Pecos is about thirty miles to the east of Santa Fé?

A. Yes, sir.

Q. Then, is Santa Fé in your grant?

A. Yes, sir.

Q. Now, don't your grant extend to Washington city on the east?

A. Yes.

Q. And it takes in San Francisco on the other side?

A. Yes, sir.

Q. And it extends on the north to British Columbia?

A. Yes, sir.

Q. And it extends on the south to the city of Mexico?

A. Yes, sir.

Q. I thought so. Now you've got a grant worth something. Outside of the league the Jemez people have never had any cultivation or houses, have they?

A. Yes, sir.

Q. You mean they have or have not?

A. No, sir.

Q. Neither the people of Zia have had any houses outside of their league, have they?

A. No, sir.

71 A. Zia? No, sir.

Q. And the people of Santa Ana never claimed any outside of their league, have they?

A. No, sir.

Q. Do you know the spring of the Ojo del Espiritu Santo?

A. Yes, sir.

Q. How long have you known that?

A. From the time I was born.

Q. Was there anybody living at the Ojo del Espiritu Santo?

A. Diego Baca.

Q. How long has he lived there?

A. I do not remember how long.

Q. Was he living there when you were a little boy?

A. Yes, sir.

Q. And did he live there when your grandfather was a little boy?

A. Yes.

Q. And when your great-grandfather was a little boy he was still living there?

A. Yes, sir.

Q. And he was living there at the time of the conquest?

A. Yes.

Q. He has always lived there?

A. Yes.

Q. Has he any cultivated lands there?

A. Yes, sir.

Q. He has a house there?

A. Yes, sir.

Q. Has he any animals?

A. Yes, sir.

Q. What has he?

A. Horses, cattle, and sheep.

Q. Where does he keep them?

A. He has them there; I don't know.

72 Q. He keeps them around in the neighborhood of the spring, does he not?

A. Yes, sir.

Q. And waters them at the spring?

A. Yes, sir.

Q. Does he water them at any other place?

A. At the Rio Puerco.

Q. Other people pasture their cattle all through that neighborhood, do they not?

A. Yes, sir.

Q. All the Mexicans for the past seventy years have pastured their animals and cattle *their*, haven't they?

A. All pastured.

Q. And nobody has interfered with them in using the waters and pastures as they liked?

A. Yes, sir.

Q. Nobody disturbed them?

A. Yes, sir.

Q. You mean that they have not been disturbed?

A. Always.

Q. That whole country has been free and open to everybody?

A. Yes, sir.

Q. Been public land, hasn't it?

A. Yes, sir.

Q. How many people are there in the Pueblo of Jemez?

A. There are many.

Q. How many do you say there are over twenty-one years of age at Jemez?

A. I do not know how many.

Q. Are there a hundred?

A. Yes, sir.

Q. Are there five hundred?

A. I do not know; probably there are.

73 Q. Ask him if it is not true that there are not over five hundred men, women, and children.

A. Probably that is the amount.

Q. Are there as many at Zia as there are at Jemez?

A. I do not know how many there are.

Q. Which has the most people, Jemez, Zia, or Santa Ana?

A. Jemez and Santa Ana.

Q. Zia is the smaller place?

A. Yes, sir; very few.

Q. Is Santa Ana smaller than Zia?

A. It is larger.

Re-examination by Mr. HOWARD:

Q. What do you usually call this land that you are claiming here?

A. The Rio Puercio on the east side.

Q. What name do you usually give it?

A. Del Pasteo for the animals.

Q. Then you call that the pasture grant?

Mr. REYNOLDS: Objected to as leading.

Withdrawn.

Q. Do you know where the Cañada de las Milpas is?

A. Yes, sir.

Q. Is that within the limits of the grant that you now claim?

Mr. CATRON: Objected to as leading. Ask him where it is, don't tell him where it is.

Question withdrawn.

Q. Where is the Cañada de las Milpas from the Pueblo of Jemez?

A. Somewhat to the south.

Q. How far from the Pueblo of Jemez?

A. It is somewhat near. I do not know the distance.

Q. About what distance more or less?

A. It may be a league or somewhat less.

Q. Is it inside or outside of the league of Jemez?

A. Outside.

74 Q. Then it is not in the lands that they claim?

A. Yes, sir.

Q. Is the Cañada de las Milpas not in the lands that the pueblos claim?

A. Yes, sir.

Q. Within what lands that the pueblos claim?

A. To the Cañada de las Simbra.

Q. Within what lands are the Cañada de las Milpas situated that the pueblos claim?

A. Those lands that belong to the people of Zia.

Q. Is this Cañada de las Milpas within the limits of the pasture grant that you have described?

Mr. REYNOLDS: Objected to as leading.

By the COURT: Objection sustained.

Q. How far is this cañada and in what direction is it from the church of the Pueblo of Zia?

A. To the west.

Q. Is it in or outside of the league of the Pueblo of Zia?

A. Outside of the league.

Q. Do you know whether the inhabitants of either of these three pueblos farm—does anybody cultivate this Cañada de las Milpas?

A. Yes, sir; the people of Zia.

Q. How long have they cultivated—as long as you can remember?

A. From ancient time.

Q. How can they claim this land if it is outside of their pueblo?

A. Because they do that from ancient time. They have temporal farms (depending upon rainfall).

Q. Have the Pueblo of Zia cultivated anywhere else in that neighborhood and outside of their league?

A. Yes; outside of their league, in the Place Cañada de las Milpas; they only.

Q. Have the Pueblos of Jemez, Zia, and Santa Ana ever pastured their stock on land but outside of the limits of their league?

75 A. Yes, sir.

Q. Where?

A. In every direction they pastured them.

Q. Do they pasture them as far as the Rio Puerco?

A. Yes, sir.

Q. Do they pasture them as far as the Ventana?

A. No, sir.

Q. Do they pasture them as far as the Vado de Piedra?

A. No, sir.

Q. How long have the Pueblos of Zia, Santa Ana, and Jemez been on this land of the Rio Puerco?

Mr. CATRON: Objected to.

Question withdrawn.

Q. How long have the Pueblos of Jemez, Zia, and Santa Ana herded as far as the Rio Puerco?

A. Some years ago; in former times the horses were herded towards the Rio Puerco.

Q. Do you know whether your ancestors pastured their stock and horses as far as the Rio Puerco?

A. Yes.

Mr. CATRON: I object and ask to have that all stricken out.

Q. How do you know your ancestors pastured as far as the Rio Puerco?

Mr. CATRON: Objected to.

By the COURT: Objection overruled.

A. Because the horses were the animals that were pastured in that direction.

Q. How do you know that your ancestors pastured their stock as far west as the Rio Puerco?

A. In former times the people, each quarter, composed of eight or six men, would herd for a week the animals in that direction.

Q. Do the people of Jemez, Zia, and Santa Ana pasture their stock as far west as the Rio Puerco?

76 A. No, sir.

Q. How far west do they pasture?

A. The people of Zia and Santa Ana pasture around their pueblo on the mountains, on the hills, and on the plains.

Q. Where did your father pasture his stock?

Mr. CATRON: Objected to. Witness has not said his father had any stock.

Question withdrawn.

Q. Had your father stock?

A. Yes.

Q. Where did he pasture his stock?

A. There around the pueblo on the mountains and on the hills there.

Q. How far west did his father pasture his stock?

A. Chapulin, to the Chapulin and the Espiritu Santo spring and along that valley, on the west side of the valley.

Recess taken until 2 o'clock.

At 2 o'clock trial resumed.

Examination of witness VIGIL continued on re-examination.

By Mr. HOWARD:

Q. What do you call this claim that you are now claiming in this court?

A. Pasture grant.

Q. Do you know the Ojo del Espiritu Santo in the valley of the Espiritu Santo?

A. Yes, sir.

Q. Where are they with respect to the pasture grant you speak of?

A. The place is there between the Ventana to the Ojo del Espiritu Santo to the south.

Q. Who has pastured upon this pasture grant you have described since you remember?

Mr. CATRON: Objected to. There is no proof that he remembers that anybody has.

By the COURT: Objection overruled.

A. Those from Jemez and those from the Pueblo of Zia and those from the Pueblo of Santa Ana.

Q. How far west do they pasture from the Pueblos of Zia, Santa Ana, and Zemez?

A. To the Rio Puerco.

Q. And from what point on the north to what point on the south do they pasture?

A. The Ventana.

Q. On the south?

A. Vado de Piedra (rocky ford).

Q. Did your father and the fathers of the present generation of Zia, Santa Ana, and Jemez have stock on this grant?

A. Yes, sir.

Mr. CATRON: Objected to as ask- to have stricken out.

By the COURT: Overruled.

Q. Where did they pasture this stock?

A. To the Rio Puerco.

Q. Is the grant that his father pastured on the same land that they claimed under this grant?

A. Yes, sir; the same land.

Q. Do you know where the Cañada de Chavarria is?

A. No, sir.

Q. Do you know any cañada called the Vado de Piedra?

A. No, sir.

Q. Do you know whether there are any lands cultivated by any of the Indians of these three pueblos near the Vado de Piedra?

Mr. CATRON: Objected to as leading.

By the COURT: Objection overruled.

A. No, sir.

Q. Tell this court where the boundaries of this grant of pasteo are that you speak of.

78 Mr. CATRON: Objected to.  
Question withdrawn.

Recross-examination by Mr. CATRON:

Q. Who is your father?

A. Santiguito Vigil.

Q. Where was your father born?

A. Jemez.

Q. Wasn't he born at Pecos?

A. Yes; he was born there.

Q. And didn't he live at Pecos until the Pecos pueblo was abandoned?

A. Yes, sir.

Q. Wasn't you born at Pecos?

A. Yes, sir.

Q. And Pecos is east of Santa Fé?

A. Yes.

Q. How long did you live at Pecos?

A. I do not know how long.

Q. You were a man when you left Pecos, weren't you?

A. Yes.

Q. Fifteen or twenty years old?

A. Probably about that age.

Q. You remember very well the time when you left Pecos, don't you?

A. Yes, sir.

Q. You don't belong to the Pueblo of Jemez, you belong to the Pueblo of Pecos?

A. Yes, sir.

Q. Wasn't it after the American troops came to this country that you left Pecos and went over to Jemez?

A. At that time when there was war with those from the upper portion of the country and when Albino Perez was killed.

Q. Wasn't it about the time the American troops came into this country?

A. Yes; at that time we had already started from Pecos to Jemez.

79 Q. You saw the American troops come by the Pecos when they came through there going from Las Vegas to Santa Fé?

A. Yes, sir.

Q. And you were there when General Karney came to this country—

A. We were there—

Q. By the Pecos?

A. Yes, sir.

Q. It was after that you went over to Jemez?

A. Afterwards.

Q. Your father, you say, pastured some animals there towards the Puerco river?

A. Puerco river.

Q. In what year did he pasture those animals?

A. Because we were already there.

Q. What year was it?

A. In the year we started from Pecos to Jemez.

Q. Then, when you went there you put your animals on the Puerco river?

A. Yes, sir.

Q. Weren't the Navajos at that time at war?

A. Yes, sir.

Q. And they wouldn't let you keep them there, and they drove you back from the Puerco east from the Puerco, didn't they?

A. Yes, sir.

Q. And the Navajos always stole the animals of the Pueblo Indians when they got very far away from their pueblos, didn't they?

A. Yes, sir; always.

Q. And for that reason the Jemez and Zia Indians always kept their animals close to the pueblo, didn't they?

Mr. EARLE: Objected to as a repetition.

By the COURT: Objection sustained.

Q. Is there any water in the Cañada de los Milpas?

80 A. No.

Q. How long has it been since there was any crop raised or planted in the Cañada de los Milpas by any one?

A. It is years ago; I don't know how many years.

Q. Is not the Cañada de los Milpas all grown up with chamiso?

A. No.

Q. How is it?

A. It is temporal.

Q. Has there been any land cultivated—how many years has it been since land was cultivated in the Cañada de los Milpas?

A. About ten years.

Q. Is it not true that there hasn't been a seed sown in the Cañada de los Milpas for forty years?

A. Yes, sir.

Q. Is it not at least fifty years since anything was sowed there?

A. Yes, sir.

Q. How long since you were in the Cañada de los Milpas?

A. I don't remember.

Q. You have not been there for forty years?

A. Yes; I have.

Q. You never were in the Cañada de los Milpas, were you?

A. No, sir; never.

Q. You don't know what kind of a place it was?

A. Yes; I do not know.

Q. Did you ever see any crops sown in the Cañada de los Milpas?

Mr. EARLE: Objected to.

By the COURT: Objection sustained.

Witness excused.

IGNACIO CALAQUI, sworn on behalf of plaintiffs, testified in Spanish as follows:

Examination by Mr. HOWARD:

- Q. What is your name?  
81 A. Ignacio Calaqui.  
Q. Where do you live?  
A. Rio de Jemez.  
Q. Do you live in any pueblo?  
A. Yes, sir; the Pueblo of Jemez, county of Bernalillo.  
Q. About, more or less, how old are you?  
A. I am about seventy years old, more or less.  
Q. Do you know the name of the claim for the land which you are claiming in this court?  
A. Yes, sir.  
Q. What is its name?  
A. The land—I know it from the Rio Grande to the Rio Puerco for pasturage.  
Q. What is the name of this land that you are claiming here?  
A. It is called Merced de Pasteo.  
Q. Do you know where the Ojo del Espiritu Santo are that lie in the valley of the Espiritu Santo?  
A. Yes, sir.  
Q. Where are those places with respect to this grant?  
A. They are from the Jemez to the Rio Puerco.  
Q. What is your official position in Jemez?  
A. I am the principal officer.  
Q. Do you know where the Cañada de los Milpas is situated?  
A. Yes, sir.  
Q. In what direction is it from the Pueblo of Zia?  
A. To the west.  
Q. About how far, more or less?  
A. It is about a league.  
Q. Is it out or inside of the league of the Pueblo of Zia?  
A. It is outside of the league, but it is within the pasture grant.  
Q. What use is made of this pasture grant by the Indians of Santa Ana, Zia, and Jemez?

Mr. CATRON: Objected to.

82 By the COURT: Objection overruled.

- A. What pueblos?  
Q. The three pueblos.  
A. For pasturing.  
Q. For pasturing what?  
A. To pasture horses, cattle, and sheep.  
Q. Did any of these three pueblos make any other use of these lands of this pasture grant?  
A. Yes.

- Q. What ?  
A. To pasture.  
Q. Did they make any other use of it but pasturing ?  
A. Yes.  
Q. What ?  
A. To possess it.  
Q. To possess it how ?  
A. Possess it with temporales.  
Q. Where ?  
A. At the Cañada de los Milpas.  
Q. Which of the pueblos possessed the Cañada de los Milpas with temporales ?  
A. Those from Zia.  
Q. How long have those from the Pueblo of Zia occupied this with temporales ?  
A. Many years ago.  
Q. As long as you remember ?  
A. Yes, sir.  
Q. Do you know whether your father possessed this Cañada de los Milpas with temporales ?  
A. Yes, sir.  
Q. Do you know whether your grandfather possessed this Cañada de los Milpas with temporales ?  
A. Those from Zia.  
Q. How do you know they possessed this land with temporales ?  
83 A. From the principals who are living and the information given to the young ones who are being born.  
Q. Do you know a cañada called Achavarria ?  
A. Yes, sir.  
Q. Where is this Cañada de Achavarria ?  
A. From the Vallito below.  
Q. Below or above the fall ?  
A. Above.  
Q. Where is this Cañada de Achavarria with respect to the pasture grant ?  
A. (No reply.)  
Q. Ask him if this Cañada de Achavarria is west or east of the Rio Puerco.  
A. To the east.  
Q. Do you — whether if any of these Pueblos of Zia, Santa Ana, and Jemez made any use of this Cañada de Achavarria ?  
A. Those from Santa Ana.  
Q. What use did they make of it ?  
A. Possessed it.  
Q. How did they possess it ?  
A. By temporal.  
Q. Do you know how long they possessed it with temporals ?  
A. Yes, sir.  
Q. About how long ago ?  
A. It is long ago.

Q. As long as you can remember? How big were you when you knew they possessed it by temporals?

A. They were possessing it when I came to the age of reason.

Cross-examination by Mr. CATRON:

Q. Where were you born?

A. At Jemez.

Q. Then you belong to the Pueblo of Jemez, do you?

A. Yes, sir.

Q. You don't belong to Zia?

84 A. No, sir.

Q. Never lived in Zia, did you?

A. No, sir.

Q. You are a farmer, aren't you?

A. Yes, sir.

Q. And attend to your farm?

A. Yes, sir.

Q. You very seldom go away?

A. Yes, sir.

Q. It has been a good many years that you haven't been away from the Pueblo of Jemez until you came here, hasn't it?

A. No, sir.

Q. When did you go away from the pueblo the last time before you came here?

A. I have not gone out.

Q. You have all your life been there, have you?

A. Yes, sir.

Q. This is the first time in all your life you ever left the Pueblo of Jemez?

A. Ask him of Santa Fé.

Q. Except this time?

A. I do go out in the neighborhood.

Q. You always stay within the limits of the league?

A. Yes.

Q. How far is the church of the Pueblo of Jemez from the Rio Puerco?

A. Six or seven miles.

Q. How far is it from the Pueblo of Jemez to the Ojo del Espiritu Santo?

A. It is near.

Q. Well, how far is it?

A. About three or two hours, probably.

Q. Is there anybody living at the Ojo del Espiritu Santo?

A. Yes, sir.

Q. Who is it?

85 A. Diego Baca.

Q. How long has he lived there?

A. He has lived there about twenty or fifteen years.

Q. Hasn't he lived there for forty years?

A. I don't know.

Q. Didn't his father live there before him?

A. Yes.

Q. Did you know Luis Cabeza de Baca?

A. No, sir.

Q. You have heard of him?

A. Yes, sir.

Q. He owned the grant that covered the land where the Espiritu Santo spring is, didn't he?

Mr. EARLE: Objected to as immaterial.

By the COURT: Admitted subject to objection.

A. I don't know, sir.

Q. That land was always recognized as belonging to Luis Maria Cabeza de Baca and his children, wasn't it?

A. No, sir.

Q. Hasn't it been known in the public there as belonging to him?

A. No, sir.

Q. You know the place called the Jemez mountain?

A. No, sir.

Q. Isn't there a mountain lying between the Pueblo of Jemez and the Espiritu Santo spring called the Jemez mountain?

A. I have not heard it so called.

Q. Is there any mountain lying between the Espiritu Santo springs and the Pueblo of Jemez?

A. Yes; there are there many of them.

Q. On what side of that mountain does the valley of the Espiritu Santo lie?

A. On the other side.

86 Q. When did you first know the Espiritu Santo springs?

A. I was already grown up when I knew it.

Q. You didn't know it, then, until you were twenty or twenty-five years old, did you?

A. I was probably fifteen years old when I knew it.

Q. Who was living there then?

A. Nobody.

Q. Wasn't there some houses there?

A. No, sir.

Q. Wasn't there some corrals there?

A. No.

Q. Didn't people pasture sheep around there?

A. No; I don't remember.

Q. You do not remember very much what took place when you were fifteen years old?

A. No.

Q. Who told you to say you were seventy years old?

A. I knew it.

Q. How do you know you are seventy years old?

A. I knew it.

Q. How?

A. Because I say about twenty years more or less at the time when these gentlemen came into this country.

Q. You mean the American troops?

A. (No reply.)

Q. Do you mean that you were twenty years old when these gentlemen came into this country?

A. No.

Q. Did you know the Navajo Indians?

A. Yes, sir.

Q. Where did they live with reference to the Pueblo of Zia and Jemez?

A. To the west.

87 Q. When you were a young man weren't the Navajos *had* war with the Pueblos?

A. Yes.

Q. How old were you when you first knew them to be at war?

A. I don't remember the first time.

Q. You were *very* young, weren't you?

A. Yes.

Q. They kept up war continuously until they were taken over to the Bosque Redondo?

A. Yes, sir.

Q. It was always dangerous for the people of Zia and Jemez to let their stock run out?

A. Yes, sir.

Q. The people of Zia and Jemez kept their stock close to the pueblos, did they not?

A. Yes, sir.

Q. When you were a boy it was dangerous to take your stock over to the Puerco river, wasn't it?

A. Yes, sir.

Q. And you never did take them over there when you were a boy, did you?

A. Yes, sir.

Q. You always kept them close at home, didn't you?

A. No; they roamed around.

Q. And did the Indians attack them?

A. No; because many people went out with their horses.

Q. Did the people turn out and all go with their horses out every day?

A. They would pasture them.

Q. They drove their horses in every night, did they not?

A. They secured them.

Q. Brought them home to the pueblo?

A. No.

88 Q. What did they do with them if they did not bring them to the pueblo?

A. Kept them in the field.

Q. How close to the pueblo did they bring them, in the cultivated fields?

A. No, sir.

Q. Did they bring them inside of the league?

A. Yes; in the night-time, and in the daytime they would take them out.

Q. Did they bring their cattle in at night?

A. Yes.

Q. They always kept the cattle inside of the pueblo, didn't they, so that the people could go out and drive off the Navajos if they attacked them, didn't they?

A. They took them out to pasture sometimes outside of the league.

Q. But they most generally kept them inside of the league, didn't they?

A. Yes; when they were at war.

Q. And they were at war all the time until the Navajos were taken to the Bosque Redondo?

A. Always; yes.

Q. And prior to the time that the Navajos went to the Bosque Redondo the Jemez and Zia people kept their cattle inside of the league, didn't they?

A. Outside of the league.

Q. Didn't they keep them inside while the Navajos were there?

A. Outside of the league.

Q. Did they keep them all the time outside the league?

A. Yes; pasturing.

Q. Every night?

A. At night they watched them.

Q. Now, isn't it true that they watched them in the daytime and corraled them at night?

89 A. Yes; in the daytime they watched and guarded them.

Q. How much is the league of the Pueblo of Jemez—how many leagues are in the Pueblo of Jemez?

A. Everywhere.

Q. From the church?

A. (No reply.)

Q. Don't you know? From the church where?

A. In every one of the directions—to all directions one league.

Q. Did you pasture your animals in the direction of the Rio Grande?

A. Yes; at times.

Q. Did you pasture them in the direction of the Cañon de Jemez?

A. Yes, also.

Q. Did you pasture them in the direction towards the south?

A. Yes; in every direction.

Q. In that country everybody else pastures their animals around there, too, didn't they?

A. Yes; in every direction was pasture to everybody.

Q. Mexicans as well as Indians?

A. Yes, sir.

Q. Nobody from your pueblos ever prohibited anybody from pasturing their animals anywhere in that vicinity?

A. No, sir; everybody joined together.

Q. That whole country was regarded as public land for everybody to go on, wasn't it?

A. Yes.

Q. And everybody could go on this land and pasture?

A. No; only those belonging there.

Q. Those living around there did so, didn't they?

A. Yes, sir.

Q. Those who had sheep down at Bernalillo used it, didn't they?

A. I don't know.

Q. Those who had sheep around Peña Blanca, too, didn't they?

90 A. I don't know anything about it.

Q. You don't know much about these lands yourself, do you?

A. No, sir.

Q. How many miles is it from the Ventana to the Vado de Piedra?

A. About seven or eight miles.

Q. How long does it take you to go from the Ventana to the Vado de Piedra on horseback?

A. Half a day, very near.

Q. How long does it take you to go from the Pueblo of Jemez to the Puerco river near the Mesa Prieta?

A. Not less than half a day on horseback.

Q. Do you know the mesa called the Mesa Prieta?

A. Yes, sir.

Q. Where is the Cañada de Achavarria from the Mesa Prieta?

A. On this side.

Q. Is the Cañada de Achavarria near the Puerco river?

A. Yes, sir.

Q. It runs out into the Puerco river, doesn't it?

A. Yes.

Q. And that is down south of the Mesa Prieta?

A. Yes.

Q. How many miles is the Cañada de Achavarria south of the south point of the Mesa Prieta?

A. A strip.

Q. Is it a league south of the Mesa Prieta?

A. No.

Q. Is it a mile?

A. No; it is near.

Q. How near is it to the Mesa Prieta?

A. It is near.

Q. Well, is it a mile from it?

A. More or less.

Q. Is it a thousand varas?

A. No.

Q. Is it two thousand varas?

91 A. It is somewhat distant.

Q. Is it two thousand varas?

A. No; probably less.

Q. It is, then, between one and two thousand varas?

A. Yes.

Q. Were you ever in the Cañada de las Milpas?

A. Yes.

Q. When were you there?

A. Not long ago.

Q. Was that the first time you were ever there?

A. Yes; not very long ago.

Q. Is there any land being cultivated in that cañada now?

A. No, sir.

Q. You never did see any land cultivated there, did you?

A. Yes; I have.

Q. How long ago?

A. It is about twenty or twenty-five years ago.

Q. How many years did they plant there at that time? Was it just one year?

A. No; from the time it was peopled.

Q. What Indians have you *saw* cultivating the land in the Cañada de las Milpas; what was his name?

A. Those from Zia.

Q. What was the name of the Indian?

A. Tomas Felipe, Santiaguito Baltazar; those are the ones that plowed.

Q. Did they live there or did they live in Zia?

A. They stayed there in their camp and had their farm there.

Q. Where did they stay the rest of the time?

A. They stayed there.

Q. Did they stay in Zia or out there in the winter time?

A. In the winter time they stayed there until they carried away all their crops.

Q. When did they come back there?

A. They returned that year.

92 Q. How close did you say that was to the Pueblo of Zia?

A. About two leagues.

Q. You said while ago it was about one league or less?

A. Yes; because it is near.

Q. Did they have a house there?

A. Yes.

Q. What kind of a house did they have?

A. They built their house there.

Q. Is there any one living there now?

A. It is not possessed on account of the dry weather.

Q. Has there been anybody there in the last ten years?

A. Yes; those from Zia go there.

Q. Within the last ten years?

A. Yes.

Q. Give the names of some who have been there during the last ten years.

A. No, sir.

Q. Isn't it true that there hasn't been anybody there within the last ten years?

A. Yes.

Q. How old were you when you first saw the Cañada de los Milpas?

A. I was already grown up.

Q. All you know about cultivation of the Cañada de los Milpas is what you saw when you were a grown-up man and what the old people said?

A. Yes, sir.

Q. When were you at the Cañada de Achavarria?

A. Long ago.

Q. Is it forty years ago?

A. I do not know.

Q. How old were you when you first knew the Cañada de Achavarria the first time?

A. I was already grown up.

93 Q. Do you know in what year you were born—the particular year?

A. No, sir.

Q. Do you remember when the American troops came into this country?

A. Yes, sir.

Q. Where were you when they came in?

A. At the pueblo.

Q. Did you see the troops go by the pueblo when they were out in the country after the Navajos?

A. Yes, sir.

Q. You know what year that was?

A. No, sir.

Q. Did they go by the pueblo, or did they go by some other road?

A. (No reply.)

Q. You didn't see them, did you?

A. I did not see them.

Q. You were quite young then?

A. Yes, sir.

Q. You were about ten or twelve years old at that time, weren't you?

A. I was already a boy.

Q. Did you say your father had land in the Cañada de los Milpas?

A. No, sir; those from Zia. I am from Jemez.

Q. Your father never had any cultivation in the Cañada de los Milpas?

A. Yes; pasture land.

Q. In the Cañada de los Milpas—if that land was cultivated, was it pastured also?

A. Yes; outside of the farm.

Q. Did the people of Jemez pasture down at the Cañada de los Milpas?

A. Yes.

Q. Did they cultivate down there?

A. No; they pastured their flocks.

94 Q. That is about as far as they went *went* away with their flocks, wasn't it?

A. Yes.

Q. Is the Cañada de los Milpas near a stream?

A. Yes; below.

Q. Near what stream is it?

A. The Rio Salado.

Q. How far is it from the river of Jemez?

A. It is near.

Re-examination by Mr. HOWARD:

Q. What did you mean by the land being cultivated in the Cañada de Achavarria from the time it was peopled?

A. Where?

Q. What did you mean by saying that the Cañada de Achavarria was cultivated from the time it was peopled—by the Santa Ana?

A. Yes, sir.

Q. How long did they sow it?

A. For a long time; I can't remember well, but they possessed it.

LORENZO VICENTE, sworn, testified in behalf of plaintiffs in Spanish as follows:

Examination by Mr. HOWARD:

— How old are you?

A. I can't remember how old I am.

Q. How old were you when the Americans came in and took possession of New Mexico?

A. I do not know.

Q. Where do you live?

A. Santa Ana.

Q. Pueblo of Santa Ana?

A. Yes, sir.

— What county is the Pueblo of Santa Ana in?

A. I can't remember.

Q. How far is it from Bernalillo?

A. I can't remember.

Q. In what direction is it from Bernalillo?

95 A. Below.

Q. In what direction is the Pueblo of Santa Ana from the Pueblo of Zia?

A. To the west.

Q. On what river is the Pueblo of Santa Ana?

A. On the River Jemez.

Q. Which of the three pueblos is the closer to Bernalillo?

A. Santa Ana.

Q. How long does it take you to ride on horseback from Santa Ana to Bernalillo?

A. I don't know.

Q. How big were you when the Americans came in New Mexico?

A. About that height (indicating about three feet).

Q. About how many years were you?

A. I had that height (indicating as before).

Q. Do you know the name of the claim for land that you are now presenting to this court?

A. I don't know, sir.

Q. What is the name of the land that you are presenting to this court of the three towns?

A. For pasturage.

Q. What is that pasture grant called; has it any name that you know of?

A. Yes, sir; from my forefathers and principals; they knew it and I know it was that.

Q. What was the name?

A. I don't know the name, but our fathers and elders knew it.

Q. Do you know the Ojo del Espiritu Santo?

A. Yes, sir.

Q. How does that valley and that spring lie with reference to this pasture land that you speak of?

A. To the north.

Q. Is it outside of this pasture land that you are claiming?

A. It is inside of the boundary.

96 Q. Do you know the Cañada de Achavarria?

A. Yes.

Q. What direction is this Cañada de Achavarria from Santa Ana?

A. West.

Q. How far west of Santa Ana?

A. The farm?

Q. Yes; the farm land at Achavarria.

A. The farm.

Q. Who farms there?

A. People of Santa Ana.

Q. How long do they farm there, these people of Santa Ana, at this Cañada de Achavarria?

A. I don't know, but they have ploughed there for many years.

Q. Did your father farm there?

A. Yes; probably he did farm there, but he does not farm there now.

By Mr. CATRON: Move to strike that answer out. The witness says he probably farmed there.

By the COURT: The answer will be stricken out.

Q. How do you know what your ancestors did; how do you learn what your ancestors did about the land?

A. I don't remember any such matter.

Cross-examination by Mr. CATRON:

Q. Do you know where the Vado de Piedra is?

A. Yes, sir.

Q. Where is that?

A. On the west.

Q. West of what?

A. In the vicinity of the Cañada de Achavarria and the Rio Puerco.

A. About how far from the Cañada de Achavarria is the Vado de Piedra?

A. To the north.

Q. Which is to the north?

A. The Vado de Piedra is to the north.

97 Q. In what direction does the Cañada de Achavarria lie from the Vado de Piedra?

A. To the west.

Q. On what side of the Rio Puerco is the Cañada de Achavarria?

A. Within the land.

Q. Within what land?

A. Within the land of the pasturage.

Q. When they first came to this country, the American troops, did they pass by the Pueblo of Santa Ana?

A. I don't remember.

Q. You were only a boy when the American troops first came into this country?

A. About that high (indicating).

Q. About ten or twelve years old. You don't remember anything that took place before that time, do you?

A. Yes, sir; because I was not there.

Q. But you don't remember anything about this land before the American troops came in here, do you?

A. No.

Q. All you ever heard about them is what you heard since that time?

A. No.

Q. You never worked in the Cañada de Achavarria, did you?

A. No, sir.

Q. How old were you when you were at the Cañada de Achavarria at the first time?

A. One year.

Q. Do you mean that you were a baby or that you were a grown man?

A. I was somewhat big, aged.

Q. When you first saw the Cañada de Achavarria you were a grown-up man?

A. Somewhat.

Q. How many years was that after the American troops that you first went to the Cañada de Achavarria?

98 A. I don't remember.

Q. Several years, wasn't it?

A. Yes.

Q. What did you do out there when you first went to that place?

A. I worked.

Q. Who did you work for?

A. For my brothers.

Q. Is your brother living?

A. Yes.

Q. Where is he?

A. He is at pueblo.

Q. Is he older than you?

A. I was the oldest.

Q. Your brother owned a farm over there and you went to work for him at that time?

A. Yes.

Q. Your brother, then, was a grown-up man when he owned that farm, was he?

A. Yes, sir.

A. How many years are you older than your brother?

A. I don't remember.

Q. Are you five years older?

A. I don't remember; I don't know.

Q. Then are you ten years older?

A. Certainly.

Q. There are a great many Mexican people living around within a few miles of this land, are there not?

A. Where?

A. This pasture land that you speak of.

A. Now?

Q. Isn't there somebody living at the Ojo del Espiritu del Santo?

A. Don Tomas is there.

Q. Tomas who?

99 A. Tomas Baca.

Q. How long has he been there?

A. I don't know how long?

Q. Was he there when you were a young man?

A. No.

Q. Was his father there then?

A. No, sir; probably he was.

Q. Who, if you know, was the father of Diego Baca there?

A. No, sir.

Q. Did you know Miguel Baca?

A. No, sir.

Q. Did you know any relatives of Diego Baca?

A. No, sir.

Q. The people of that part of the Territory have pastured these lands all around the Pueblo of Jemez and Zia, haven't they, the same as the Indians?

— Yes, sir.

Q. Nobody has been deprived of any right to pasture, have they?

A. No; the pasturage belonged only to Jemez, Zia, and Santa Ana.

Q. But nobody has been driven away from there, has they?

A. No, sir.

Q. Everybody has been allowed to go over the land as they pleased, have they not?

A. Yes.

Q. Diego Baca has stayed there with his sheep, has he not?

A. I don't know how many.

Q. He has got some, hasn't he?

A. I don't know. I have never been there.

Q. Were you never at the Ojo del Espiritu Santo?

A. I passed there; yet I don't remember.

Q. You didn't stop?

A. Yes; I stopped, but there was nothing.

Q. How long did you stop there?

A. I don't remember how many years.

100 Q. Did you remain there at the Ojo del Espiritu Santo more than an hour?

A. Yes; when I passed there I stopped a short time.

Q. Where do the people of Santa Ana pasture their animals?

A. Within the boundaries, within the land of the pasturage.

Q. Of their league? Do they not pasture their lands within their own league?

A. Yes, sir; they pasture outside, toward the west.

Q. Does the land lie immediately west of the Pueblo of Santa Ana?

A. (No reply.)

Q. How far do the people of the Pueblo of Santa Ana go away from the church to pasture them?

A. I don't know how many leagues.

Q. They keep them right close to the league, don't they?

A. Yes, sir.

Q. They keep them in sight so that they can watch them and prevent the Navajo Indians from driving them off?

A. Yes.

Q. Then they never took them away more than three or four miles from the pueblo, did they?

A. No.

Q. That has been the way they have done ever since you have known them, is it?

A. I think so.

Q. And that is the same way that the towns of Jemez and Zia do, isn't it?

A. Yes.

Q. Who told you to say that the old people had told the young people what was the name of the grant, of the grant for pasturage?

A. The elders.

Q. Who told you to say that the elders said so?

A. The elders of the Zia, Jemez, and Santa Ana.

101 Q. When were you ever present in any council of Zia, Jemez, and Santa Ana?

A. No; when I grew up into manhood.

Q. How long since you were present at any council of Santa Ana when anything was said about this grant?

A. I don't remember that, sir.

Q. How old were you at that time?

A. I don't remember.

Q. Do you know where the Ventana is?

A. Yes.

Q. Where is it?

A. To the north.

Q. How far is it from the Vado de Piedra?

A. It is inside of the boundary.

Q. How far are those two places apart—the Vado de Piedra and the Ventana?

A. The Ojo del Espiritu Santo.

Q. Last question repeated to witness and interpreter allowed to explain.

A. I don't remember.

Q. How long does it take you to go on horseback from the Ventana to the Vado de Piedra?

A. I don't know, sir. I don't know that. I have never passed there.

Q. How long does it take you to go from the Pueblo of Jemez to the Vado de Piedra?

A. Neither.

Q. Do you know whether the Navajos have ever been hostile to the Pueblos?

A. Yes, sir.

Q. When were they hostile?

A. It is at the time when they had war.

Q. Do you know when the Navajos were sent to the Bosque Redondo?

A. Yes, sir.

102 Q. Were they always hostile to the Pueblos before that time?

A. No, sir.

Q. Were they hostile before that time?

A. No, sir.

Q. Didn't the Navajo Indians ever steal the animals of the pueblo?

A. Before.

Q. When?

A. At the time when they were at war.

Q. Was that before the American troops came here or afterwards?

A. Afterwards.

Q. You don't remember anything about them before the American troops came here, do you?

A. No, sir.

Q. Were they at war after the American troops came in here with the Pueblos of Zia, Santa Ana, and Jemez?

A. Yes, sir.

Q. And the Pueblos kept their animals close to the pueblo, didn't they, to protect them against the Navajos?

A. Yes, sir.

## Re-examination by Mr. HOWARD :

Q. Do you know how the Bacas, that you have been asked about, came to live at the Ojo del Espiritu Santo?

A. No, sir.

Q. When did you first know of their being there?

A. I don't remember. They were already there when I was a man.

Q. Did you ever hear from any one how they came there?

A. No, sir.

Q. Did you ever hear of Tomas Cabeza de Baca?

A. No, sir.

Q. Who was the first Baca that you ever heard of being at the Espiritu Santo?

A. Those who are there now.

Adjourned until tomorrow morning at ten o'clock.

103

SATURDAY MORNING, August 5, 1893.

Trial resumed.

Mr. HOWARD: I offer in evidence testimony of these witnesses, taken before the surveyor general, Juan Casados and Jose Rumoldo Casados.

JOSE R. YEBO, sworn, testified on behalf of plaintiffs in Spanish, as follows:

## Examination by Mr. HOWARD :

Q. What is your name?

A. Jose R. Yebo.

Q. Where do you reside?

A. At the Pueblo of Jemez.

Q. About how old are you?

A. I do not know how old I am.

Q. More or less, about how old are you?

A. I have said I do not know how old I am.

Q. Are you of age?

A. Probably.

Q. Do you occupy an official position in the Pueblo of Jemez?

A. Yes, sir; I am governor of the Pueblo of Jemez.

Q. What do you call this claim of land that you have before this court?

A. It is the grant del Pasteo, which was given to us by the King of Mexico.

Q. Has the Pueblo of Jemez any animals?

A. Yes.

Q. Where do they pasture these animals?

A. We pasture inside of the league and outside of the league up to the Ventana and down to the Rio Puerco, to the Vallito.

Q. How long have they done that, that you know of?

A. I do not know. It is as far back at the time when I was a boy.

104 Q. Did your father have any and the fathers of the present generation of the Pueblos of Jemez have any stock?

Mr. CATRON: Objected to, as it has not been shown that he knows or how he got his knowledge.

By the COURT: Objection overruled.

A. Yes, sir.

Q. Did they pasture their stock? Where did they pasture their stock?

A. They pastured on the Rio Puerco as far as the Vallito.

Q. How do you know that they pastured their stock there?

A. Because my grandfather said they had pastured there.

Mr. CATRON: I object to the answer and ask to have it stricken out.

By the COURT: The answer will be stricken out.

Q. How do you people of the pueblos learn and know what has been done in your pueblo in the past?

A. Because our elders taught — to us as we are growing up. That is the reason why we learn this from our elders.

Cross-examination by Mr. CATRON:

Q. Do you not remember how old you are?

A. No, sir.

Q. Do you know Jose Miguel Vigil?

A. Yes, sir.

Q. Which is the older, you or Jose Miguel Vigil?

A. Jose Miguel Vigil.

Q. How much older is he than you?

A. I do not know how much older is he than I am.

Q. Well, when you were a little boy about seven or eight years old he was a grown-up man, wasn't he?

A. Yes; he was already a man.

Q. He is at least twenty years older than you?

A. Yes; probably so.

Q. About what age were you when you can first remember facts?

A. I do not know.

105 Q. Do you remember when you were ten years of age?

A. No, sir.

Q. Can you remember anything that took place when you were twelve years of age?

A. No, sir.

Q. Can you remember anything that took place when you were twenty years of age?

A. No, sir.

Q. You are not more than fifty years of age now?

A. I do not know; I do not know all this.

Q. How many men can you remember have been governors of the Pueblo of Jemez, commencing with yourself and going back?

A. I do not remember; I do not know how many.

Q. Are you acquainted with the Navajo Indians?

A. Yes; I know the Navajos.

Q. How far is it from the pueblo west to the Rio Puerco?

A. I don't know.

Q. Weren't the Navajo Indians around the Puerco river very frequently?

A. I don't know all these things.

Q. Do you remember when the Navajo Indians were taken from their reservation and taken to the Bosque Redondo?

A. No.

Q. Do you remember the last time when the Navajo Indians were at war with the Mexicans and other people?

A. No, sir; I don't remember.

Q. Did you ever see an Navajo Indian in your life?

A. Yes.

Q. Do you know the Navajos have been enemies of the Pueblos and carried off their stock and animals?

A. No.

Q. They have not been friendly to the Pueblos, have they?

A. Yes; they were always.

106 Q. Did you ever hear of their stealing horses from the Indians of Jemez, Zia, and Santa Ana?

A. I do not know these things.

Q. Is there anybody living on the land between the league of the Pueblo of Jemez and the Rio Puerco?

A. Yes; there is where we have our pasture and where Diego Baca lives.

Q. How long has Diego Baca been living there?

A. I do not know how much it is.

Q. Has Diego Baca been living there ever since you can remember?

A. Yes, sir.

Q. Have you ever been to the place where he lives?

A. Yes; because we have our horses there, and I was wont to go there.

Q. Do you keep your horses at the Ojo del Espiritu Santo?

A. Yes; we herd our horses there.

Q. How close to the Ojo del Espiritu Santo do you herd your horses?

A. To the spring; we herd our horses and our cows all over that place.

Q. How close to the spring do you herd them?

A. I don't know.

Q. Isn't it true that Diego Baca has possession of that spring?

A. I don't know what Diego Baca has; I know what our fathers told us, and that is all I know.

Q. Who told you to know that?

A. My fathers and grandfathers.

Q. Who told you to say that when you got here?

A. Myself.

Q. Have you talked with this gentleman (Mr. Howard) since you have been summoned as a witness?

A. No, sir.

Q. Have you never seen him before until this morning?

A. No, sir.

Q. Didn't you talk with him yesterday on the streets as  
107 you were going down from this court-house?

A. No, sir.

Q. Didn't he tell you to say when you come on the stand that your ancestors told you these things?

A. No, sir.

Q. Didn't any one else tell you to say that?

A. No; nobody.

Q. Have you ever told anybody what you were going to testify to—what you knew—before you were sworn?

A. No.

Q. Now, tell me if it is not true that Diego Baca has possession of that spring of the Ojo del Espiritu Santo.

A. I do not know that.

Q. Doesn't he live there?

A. He lives there.

Q. Doesn't he use the water?

A. Yes; he uses it.

Q. And doesn't he keep the stock of other people away from it?

A. I do not know that.

Q. How close is the spring to his house?

A. I do not know that.

Q. How far does the water run away from the spring?

A. I do not know how much.

Q. Does it run more than four hundred varas?

A. I don't know.

Q. Have you been there frequently?

A. No.

Q. Isn't it true that the Rio Puerco is dry almost all the year?

A. Yes; that is true always.

Q. No water runs in the Rio Puerco for nine or ten months  
108 in the year?

A. I don't know that I never traveled that way.

Q. You have never been to the Rio Puerco, have you?

A. No, sir.

Q. Do you know of any other water or spring on this land besides the Ojo del Espiritu Santo?

A. No, sir.

Q. Do you know of any other stream of water or place where water runs on that land?

A. No; but I don't know how I can state that I do not know.

Q. You can state that you don't know it. Isn't it true that ever since you have known that land everybody has pastured their horses, cattle, and sheep on it?

A. We pasture all our horses and our cows there.

Q. And all the Mexicans do so too, don't they?

A. Yes, sir.

Q. Nobody has ever been deprived of the right to go and pasture their animals there, have they?

A. We ourselves pasture there; that's all I know.

Q. Haven't you seen anybody else have animals there?

A. No; we ourselves—the three pueblos—are the only ones that pasture there.

Q. Do you know that?

A. Yes, sir.

Q. Don't Diego Baca pasture his animals there?

A. He pastures there because he lives there.

Q. Don't other people who live there or not far off pasture their animals?

A. I don't know that.

Q. Don't the people of Canon de San Diego pasture there  
109 animals there?

A. Yes.

Q. Don't the people of Bernalillo pasture their animals there?

A. I don't know, sir.

Q. Don't the people of Pena Blanca pasture their animals there?

A. I don't know that.

Q. You don't know much about this at all, do you?

A. No.

Q. Do you know A. Perea?

A. Yes.

Q. Hasn't he a cattle ranch on this very land?

A. I don't know.

Q. Ask him if A. Perea don't pasture his cattle on that ranch.

A. I don't know.

Q. Why don't you know?

A. Because I don't know; because I never traveled.

Q. You have never gone over this land very much, have you?

A. No, sir.

Q. You always confine yourself to the limits of the league, don't  
you?

A. A person cannot state what he does not know.

Q. Do you know Jose Baca?

A. Yes.

Q. Hasn't he got a ranch on this same property?

A. I don't think he has.

Q. Doesn't he pasture his animals on this property—sheep, horses,  
and cattle?

A. I don't know.

Q. Do you know Francisco Armijo?

110 A. No.

Q. Hasn't a man by the name of Francisco Armijo also a  
ranch on this property?

A. I don't know.

Q. Do you know a place called San Yasidro?

A. Yes.

Q. Don't the people of San Yasidro pasture horses, cattle, and sheep on this property, some of them?

A. Yes; the people of San Yasidro pasture in that direction also.

Q. What is the custom in your pueblo as to your horses and cattle—do you not keep them herded?

A. Yes; we herd them and we have a corral at the place called Penasco.

Q. Where is the place called Penasco?

A. On the other side of the Pueblo of Jemez.

Q. How far from the Pueblo of Jemez?

A. A person who goes on horseback, it takes about half a day to go there.

Q. Have you ever been there?

A. Yes, sir.

Q. What kind of a corral is it?

A. Made of cedar posts.

Q. How long has that corral been there?

A. It is a long time, but it is no corral now; it is all burned; it is only the Penasco.

Q. Do you know the party who made that corral?

A. We have cows there.

Q. How long since that corral has been burned up?

A. Probably it is some time ago. I don't know the time.

111 Q. Since that time you have not kept your cattle there, have you?

A. We have them there now.

Q. Do you drive them home to the pueblo every night?

A. No; we have a ranch near the Penasco.

Q. If the corral is burned up, you haven't got it any more, have you?

A. Yes; we have it there; no; we don't have them there, because the corral is burnt.

Q. Where did you get water for those animals?

A. There at that rock of the Penasco, where the water runs.

Q. Where does that water come from?

A. From the mountain itself.

Q. Now, doesn't that water come down from the Ojo del Espiritu Santo spring?

A. No.

Q. Then where does it come from?

A. From the Mountain Penasco. It runs to that arroya.

Q. Isn't that the very place where A. Perea has his ranch?

A. No.

Q. Where does he get water for his animals?

A. I don't know.

Q. How long since you were at the Penasco Blanco?

A. It is some time. I don't go there now.

Q. Nobody else from the pueblo goes there now, do they?

A. Yes; they keep some horses there and cows.

Q. Isn't it ten years since you were there?

A. I don't know how many years it is.

Q. How do you know they keep horses there if you haven't been there?

A. From what we hear, because we let the horses there.

112 Q. Do you keep all your horses there?

A. Yes, sir.

Q. Now?

A. Yes, sir.

Q. What do you do when you want horses?

A. We go and get them when we need them.

Q. How far is the place where he says they had that corral from the Ojo del Espiritu Santo?

A. It is a little far from that house.

Q. How long would it take you to go on horseback from the spring down to the corral?

A. Probably half a day.

Q. How far is the place from the church of the Pueblo of Jemez?

A. A person starts from Jemez—it would probably take him a half a day to reach the corral.

Q. Is the corral near the Arroya Salado?

A. No; it is near the Penasco.

Q. Do you know where the Arroya Salado is?

A. Yes, sir.

Q. Which direction is the corral that you speak of from the Arroya Salado?

A. Above the Penasco; the Arroya Salado is below.

Q. How far is the corral from the south end of the Jemez mountains?

A. The corral is on the west side of the Jemez.

Q. Do you mean in the Jemez valley?

A. Yes; on that side.

Q. Do you know a mountain down there called Sierra Blanca?

A. Yes.

113 Q. Do you know the place called the Mesa Blanca?

A. No; I don't know the place called the Mesa Blanca.

Q. Is there an arroyo that goes through this Penasco Blanco?

A. No.

Q. In what does the water run?

A. Below.

Q. In what does the water run in, the arroyo, or does it run on level ground?

A. It runs in the arroyo.

Q. Into what does that arroyo empty?

A. The water runs from the mountain below and empties into the Rio Salada.

Q. How far is the place of the corral that you speak of from the place where that arroyo empties into the Rio Salada?

A. It is not far.

Q. Is it a mile?

A. I don't know that.

Q. What is that arroyo called?

A. Arroyo de Penasco Blanco.

Witness excused.

Mr. EARLE: I have a part of the record in this case marked "T T," identified by the stenographer as part of the files of the surveyor general's office, and I call Mr. Tipton as a witness.

WILL. M. TIPTON, sworn on behalf of plaintiffs, testified as follows:

Examination by Mr. EARLE:

Q. Do you know T. B. Catron?

A. Yes, sir.

Q. Did you ever see him write?

114 A. Yes; I saw him write here yesterday afternoon and today.

Q. Are you familiar with his handwriting?

A. I believe I am.

Q. Look at that (showing witness document referred to) and see if it is his signature.

A. This looks like his signature to me. I believe it to be his signature.

Q. Are you familiar with the handwriting of General Proudfit?

A. Yes; I know Mr. Proudfit's handwriting.

Q. Look at this paper (showing witness letter) and state if that is his signature.

A. I think that is the signature of Mr. Proudfit.

Mr. EARLE: I offer these two papers in evidence.

Mr. CATRON: I object to the introduction of this letter, as it is a matter personal to myself and my own and has nothing to do with the title of this property.

By the COURT: No ruling at present.

Here plaintiffs rested their case.

On behalf of the Government Mr. Reynolds said:

In the Espiritu Santo grant, if the court please, which has been patented, we offer in evidence all the papers in that case, together with a report of the surveyor general certified and the act of confirmation of the grant—all the papers in the surveyor general's office in that claim—reported No. 44, file No. 36, surveyor general's office, known as the case of Tomas Cabeza de Baca.

Mr. EARLE: I object to the introduction of this testimony because the petitioners in this case are in nowise bound or  
115 effected by the evidence in the record offered by the Government's counsel, for it is *res inter alios acta*, and because the petitioners are not bound by it, the same not being *res adjudicata*, and for the further reason that those papers were not original files in the surveyor general's office.

Mr. REYNOLDS: I also offer in evidence all the papers on file in the surveyor general's office reported No. 24, known as the town of San Ysidro grant, together with the act of Congress confirming the grant.

Mr. EARLE: I might suggest to counsel that the introduction of

the act of Congress is unnecessary, as the court will take judicial notice of acts of Congress.

Mr. REYNOLDS: It has been held that private acts must appear in the record and—

By the COURT: No objections being raised by the plaintiffs, the acts of Congress need not be introduced.

Mr. EARLE: I object to the introduction of this testimony for the same reasons as stated in my objection to the introduction of the paper in the Espiritu Santo case.

Mr. REYNOLDS: I offer in evidence all the files in the surveyor general's office in the case of the Canon de San Diego grant, reported No. 25.

Mr. EARLE: I object to it for the reason stated in my former objection.

WILL. M. TIPTON, heretofore sworn as a witness, testified as follows:

Examination by Mr. REYNOLDS:

Q. Is that one of the official maps of the surveyor general's office (Zia, Santa Ana, and Jemez map "T T")?

A. Yes, sir.

116 Mr. REYNOLDS: I offer it in evidence.

Q. I will get you to take that survey of what is known as the Indian pasture grant, now on file, and explain to the court the conflict with the Espiritu Santo, San Ysidro, and the Canon de San Diego grant.

Mr. EARLE: I object. It appears from the records entered the grant to the three pueblos is senior in date to the grants concerning which the witness has been interrogated, and therefore the testimony called for is incompetent, irrelevant, and immaterial.

By the COURT: Admitted, subject to the objection.

A. This map shows a conflict between the grant to the Pueblos of Zia, Santa Ana, and Jemez and the Canon de San Diego grant number 25, to the extent of about eleven and one-half miles in length from north to south and about five miles in width. There is a conflict also shown with the Espiritu Santo grant, number 44, to the extent of the entire area of the latter grant. There is a conflict also with the San Ysidro, reported number 24, of a tract something over six miles in length from east to west and about a mile and a half in width from north to south; also a conflict with the Antonio Baca grant, number 101, reported number, is shown, the extent of which it is impossible to estimate on account of the irregularity of the lines of the survey. This conflict is caused by the western boundary of the grant now on trial being surveyed along the edge of the Puercio river, while the eastern boundary of the Antonio Baca is surveyed along the edge of the Mesa Prieta, which mesa lies east of the Puerto river.

Witness excused.

117 THOMAS B. CATRON, SWORN, testified on behalf of the defendants as follows:

Examination by Mr. REYNOLDS:

Q. Where do you reside?

A. Santa Fé, New Mexico.

Q. What is your occupation?

A. Attorney-at-law.

Q. I will get you to look at that letter introduced by the plaintiffs, dated October —, 1873, directed to Surveyor General Proudfit, and state what it is.

A. This letter, which I have examined, is entirely in my handwriting. At the time this letter was written I was attorney of the United States for the Territory of New Mexico. Some time before it was written Attorney General Williams—

Mr. EARLE: I object to his making any statement as to what occurred between himself and Attorney General Williams because it is the practice of the Department of Justice, without exception, to put all such things in writing, and if any such orders were received he has or should have it or should be able to get it or a copy of the same from his successor in office.

By the COURT: The witness may proceed.

A. Attorney General Williams informed me that he had been requested to furnish counsel for the Pueblo Indians in matters pertaining to their lands, as complaints were being made that there were a great many settlers occupying and settled upon their lands. I was directed to file complaints, as such United States attorney, against all such squatters and occupants and to send him my account for my services. Under that direction I commenced

118 one hundred and fifty suits against squatters claiming and occupying lands. Amongst them I commenced suits against those who were occupying lands belonging to the Jemez Indians, in what would be called their league. Many of these cases were prosecuted and decided in favor of the Indians; others where parties abandoned them were dismissed. About the time this letter was written the Indian agent informed me of the facts set out in this letter; stated that he had been directed by the department—the agent, I think, was Doctor Thomas—that if he needed any assistance in an official capacity in looking out for the interests of the Indians to apply to me to assist them and give them advice. He informed me further that he understood that the surveyor general of the Territory of New Mexico then had under consideration for confirmation this land of the Pueblos of Santa Ana, Zia, and Jemez; that he, the surveyor general, had made the statement that if the Bacas, to whom the grant to the spring had been made, would sell their lands he would disapprove this other grant. I told him I didn't believe the surveyor general said such a thing, but that I would write a letter to Mr. Proudfit calling his attention to the rumor, and calling his attention to the fact that he must either confirm or dismiss the grant; he had no right to inquire as between

to grants; that his only inquiry was as to whether the grant papers before him were genuine and should be confirmed without reference to any outside matters, and I wrote this letter according to that statement to the surveyor general, Proudfit. I wrote this letter as United States attorney for the Territory of New Mexico to the the surveyor general of New Mexico to call his attention to what had been called to my attention by the Pueblo Indian agent, as my statements in this letter show, and as to what his duty was in the premises, and these suggestions were apparently received by him in an official way, because he endorsed on the margin of this letter that it was received from the United States attorney.

Mr. EARLE: Objected to as argumentative.

A. I never was employed in this case to prosecute it before the surveyor general, but simply to call the attention of the surveyor general as to what I had heard with reference to the matter and as to what was his duty in the premises, in my judgement.

Cross-examination by Mr. EARLE:

Q. You wrote this letter as attorney for the United States. Why did you not subscribe yourself officially?

A. I have stated in the body of that letter that it was under instructions from the Attorney General, and did so, probably, and on that account and the fact he was familiar with and knew that I was United States attorney it must have been a mere oversight.

Q. Did you send a copy of the letter from the Attorney General to the Indian agent?

A. I don't remember that I sent him any copy; the Attorney General sent the letter to me, in which he stated that he had been requested to furnish counsel for the Pueblo Indians, but I don't remember now whether I sent a copy or not; that letter was burned also at the time my office was destroyed.

Q. Did you have any correspondence with the Pueblo Indians with relation to this tract?

120 A. None except with the Indian agent.

Q. Do you remember who he was?

A. Doctor Thomas or his predecessor in office.

Q. Did you understand the conversation to mean that this Indian agent requested you to specifically write this letter?

A. He requested me to correspond with the surveyor general on the subject of these lands, and he said to me in our conversation that I state what was the duty of the surveyor general in my opinion, and asking me to call his attention to this statement made with reference to what he had said and to take such other steps as I thought proper.

Q. The Indian agent told you this rumor; do you remember where you were when he told you?

A. I think I was in Albuquerque.

Q. I notice that in this letter you state that, I have just this

minute been informed that you have promised Don Tomas C. de Baca or some others that if the Bacas would sell the grant of the Ojo del Espiritu Santo that you will reject the grant of the Indians. Mr. Tom Baca is the author of the promise.

A. Probably I may have been informed by him also; I think my recollection is that the Indian agent came to me first, and that Mr. Baca was in Albuquerque and I called him in and asked him about it.

Q. Who do you represent in this present case?

A. I represent grants owned by Mr. Otero, myself, and Mr. Gildersleeve and various other people. I am one of the parties defendant made so by the petition.

Q. From whom do you derive your title?

A. Tomas Cabeza de Baca.

Q. The man who gave you this information?

A. No, sir; he was either a grandson or a great-grandson.

121 Q. Do these others derive their title from Cabeza de Baca?

A. Mr. Perea, I think, does.

Q. Did you ever do anything else in relation to the three pueblos, in relation to this particular grant, under this letter of instructions that you received?

A. Not that I know of,

Court here adjourned to Monday, August 7th, 1893.

On Monday morning trial resumed.

The court of its own motion ordered stricken from the record and from the files the letter and introduction thereof written by T. B. Catron to the surveyor general of this Territory and part of files marked "T T" in said office, dated eighth of October, 1873, and the letter and introduction thereof of said surveyor general to said T. B. Catron in reply thereto, part of the same files, and all the testimony in relation thereto, as being immaterial and having no tendency to throw any light on the subject of the validity or invalidity of petitioners' title.

To which ruling of the court petitioners, by counsel, took an exception; which was allowed by the court.

Mr. REYNOLDS: We offer in evidence from the surveyor general's office papers in the case of the Pueblos of Jemez, reported number "A," which is for their pueblo grant or league grant.

Also papers for the Pueblo of Zia, reported number "O," for their league grant.

Also those for the Pueblo of Santa Ana, reported number "F," for their league grant; and in connection with these I offer in evidence the act of confirmation of these three grants.

I also offer the plats of these three pueblos. They, I suppose, go with confirmation as made by the surveyor general of New Mexico.

122      DIEGO BACA, sworn, testified on behalf of defendants, in Spanish, as follows :

Examination by Mr. CATRON :

Q. What is your name?

A. Diego Baca.

Q. What is your age?

A. I am sixty-nine years old.

Q. Where do you reside?

A. Ojo del Espiritu Santo.

Q. How long have you resided there?

A. From March in 1869.

Q. Where did you reside before you went there?

A. At Pena Blanca.

Q. How far is that place from Espiritu Santo springs?

A. I believe it is fifty miles distant, more or less.

Q. How long have you known the spring called the Ojo del Espiritu Santo?

A. Since the year '42; I was very small.

Q. How did you happen to know it at that time?

A. My father was appointed to make peace with the Navajos, and, having taken sick, my uncle was appointed as commissioner in his place, and he asked him to name me as an assistant.

Q. Where did you go and what did you do?

A. We went to Mestas' house, at the Rio Puerco.

Q. Where was that from the Ojo del Espiritu Santo?

A. To the west.

Q. How long did you remain there on that occasion?

A. We stayed there at the house of Mestas, waiting for the  
123      Navajos, and on the third day they came.

Q. After they came how long did you remain?

A. No, sir; we came back.

Q. While you were there did you have any opportunity of seeing the tract of land that surrounds the spring of the Ojo del Espiritu Santo known as the Ojo del Espiritu Santo grant?

A. No, sir; we did not see; we slept there at the spring, and the next day we went to the house of Mestas and waited for the Navajos.

Q. Was there anybody occupying the spring at the time you were there?

A. No, sir; there was not.

Q. At that time were there any animals—horses, cattle, sheep—on or being pastured on the land?

A. No; neither cattle, sheep, nor horses, because the Navajos did not allow it.

Q. If you know, state where the Jemez Pueblo Indians were keeping their horses, their cattle, and their sheep.

A. That I know about a year afterwards that they kept their horses at the Mesa de Vallecito.

Q. At the time you were there, in 1842, immediately prior to the time you went, were the Navajos at peace or war?

A. They were then in war and then made peace.

Q. During the time the Navajos were at war how far would they go off their range, if you know?

A. They went all over the Territory.

Q. How often after 1842 did you see that tract of land?

A. (No reply.)

Q. Did you or did you not after 1842 see that land?

124 A. No; I did not return.

Q. How soon after 1842 did you return, the next time?

A. I did not return to the spring until in '69.

Q. Did you return to any other place in the neighborhood?

A. I passed through San Ysidro and the Pueblo of Zia and Pueblo of Zuni and Moqui from the year '52.

Q. Where are the Pueblos of Zuni and Moqui?

A. To the west.

Q. From the Puerco?

A. Yes, sir.

Q. When you went through those pueblos did you or did you not pass through this land?

A. Where?

Q. The land of the spring of the Espiritu Santo grant, of the Zia, Santa Ana, and Jemez.

A. I said I passed over two different roads, sometimes through Zia and sometimes through San Ysidro.

Q. At the time you passed through there state whether or not the land lying between the Puerco river and the lands belonging to the Zia and Jemez Indians were occupied.

A. No, sir.

Q. If it had been occupied with sheep and horses would you or would you not have observed it as you went along?

A. Yes, sir.

Q. Do you know the point called the Ventana?

A. Yes, sir.

Q. Do you know a point on the Rio Puerco called the Vado de Piedra?

A. Yes, sir.

125 Q. Do you know the Rio Puerco?

A. Yes, sir.

Q. Do you know where the western boundary of the league of the Jemez and Zia Indians is?

A. No; I do not.

Q. If it is one league from the church in each one of those places, then do you know where it is?

A. The Vado de Piedra is very far.

Q. Do you know the country lying one league west from the churches of Zia and Jemez?

A. Yes; I do.

Q. Since you have been residing along that Espiritu Santo spring who, if any one, has occupied the lands between the league—from the league of the Jemez and Zia Indians to the Rio Puerco and from the Ventana to the Vado de Piedra?

A. Everybody—all the inhabitants who would be pleased to do so; and they pastured all their stock and have stock breedings there.

Q. After the Navajos made peace, in 1842, during the time that you knew that land, do you know whether it was ever occupied by any one up to the time you went to reside there?

A. No, sir; by no one.

Q. Do you know whether or not any one ever pastured, herded, and drove their stock over that property during that time?

A. Yes; all the owners of stock at that time went there, but they would immediately abandon the place on account of the Navajos.

Q. Did you know up to what time the Navajos remained hostile—up to the last time they were at war?

A. They were hostile and making raids up to the time the  
126 American troops came in. Then they began to behave themselves.

Q. Do you remember when they were taken to the Bosque Redondo?

A. I don't know when, but I know they were taken out there.

Q. How long was it before you went to the Espiritu Santo to live were they taken to the Bosque Redondo?

A. I think about four or five years before that, more or less.

Q. How were they as to being at peace or war up to the time they were taken to the Bosque Redondo?

A. At the time they were taken to the Bosque Redondo they were first at peace and then at war.

Q. Did you know Luis Maria Cabeza de Baca during his lifetime?

A. I knew him very young.

Q. Were you any relation of his?

A. He was my grandfather.

Q. Do you know whether or not he is living or dead?

A. He is dead.

Q. Did he leave any children?

A. Yes.

Q. How many?

A. He had eighteen sons.

Q. State their names, can you, as far as you remember them?

A. Antonio Baca, Juan Antonio Baca, Rosa Baca—

Q. Was Rosa Baca married?

A. Yes, sir; married to Sebastian Salas.

A. —Jose Baca, Domingo Baca, Guadalupe Baca—

Q. Was she married?

A. Yes, sir; married to Santiago Trujillo.

A. —Miguel Baca—

Q. What relation was Miguel Baca to you?

127 A. He was my father.

Q. How many children did Miguel have?

A. He had six.

Q. Give their names.

A. Quintana Baca, Diego Baca, Romando Baca, Paulina Baca—

Q. Was Paulina married?

A. She was married.

Q. To whom?

A. Juan Jose Montoya, and afterwards to Edgar.

A. —Guadalupe Baca—

Q. Was she married?

A. The wife of Jesus Maria Leyva.

A. —Marlina Baca—

Q. Was she married?

A. She was married to Dianicio Montoya.

A. —and my father, Miguel Baca.

Q. Now, go on and state who were the other children of Jose Maria Cabeza de Baca.

A. Ramon Baca, Luis Baca, Prudencio Baca, Mateo Baca, Maria Josefa Baca—

Q. Was she married?

A. Yes, sir; to Juan Luis Montoya.

A. —Luz Baca—

Q. Was he married?

A. He was not.

A. —Jesus Baca—

Q. How many Jesus' were there?

A. There were two.

Q. Were they of the same mother?

128 A. The first one was called Jesus Baca y Lucero. This was the first one.

Q. Who else were there?

A. Juana Pablo Baca—

Q. Was she married?

A. Yes, sir; to Jose Garcia.

A. —Felipe Baca, Jesus Baca y Lucero, Josefa Baca—

Q. Were there two by the name of Domingo or not?

A. No.

Q. Was there one by the name of Manuel Baca?

A. Yes.

Q. Antonio Baca, the first one, living or dead?

A. He is dead.

Q. Did he leave any children?

A. Yes.

Q. State their names.

A. He only left one—Juan Manuel Baca.

Q. Is he living?

A. No; he is dead.

Q. Did he leave any children?

A. Yes, sir.

Q. Who were they? State them.

A. Jose Baca, Preciliano Baca.

Q. Is Juan Antonio Baca living or dead—the second son?

A. He is dead.

Q. How long has he been dead?

A. He died in '33.

Q. Did he leave any children?

A. Yes.

129 Q. If you know them, state who they were.

A. Jesus Baca, Encarna Baca, Tomas Baca, Cesaria Baca, Domingo Baca, Jose Baca, Josefa Baca, Guadalupe Baca, Quirino Baca, Altagracia Baca, Nicolasa Baca, Trinidad Baca—

Q. Was she married?

A. Yes, sir; to Fernando Delgado.

Q. Did they have any children?

A. Yes; Tomacito Baca.

Mr. EARLE: I can't see the necessity for all this testimony nor the object of it.

Mr. CATRON: I do this to trace down the title of myself and adverse claimants here, defendants. These parties—most of them, with some others—I have obtained my title through different mesne conveyances—

Mr. EARLE: I object to all this testimony as incompetent, irrelevant, and immaterial, for the reason that under the grant to the petitioners they have established and introduced the act of juridical possession. There has been no denouncement of the grant and therefore no foundation has been laid for this testimony.

By the COURT: Admitted subject to the objection.

Witness excused.

FRANCISCO ARCHIBEQUE, sworn, testified on behalf of defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. What is your full name?

A. Francisco Archibeque.

130 Q. How old are you?

A. Sixty-five years old.

Q. Where do you reside?

A. At Algodones.

Q. Where is Algodones—in what county?

A. Bernalillo county, New Mexico.

Q. Do you know where the Puerco river is?

A. Yes, sir.

Q. Do you know where the Pueblos of Zia, Santa Ana, and Jemez are?

A. Yes, sir.

Q. Do you know a place in that section of the country known as the Ventana?

A. Yes, sir.

Q. Do you know where the Vado de Piedra is on the Rio Puerco?

A. Yes, sir.

Q. Are you acquainted with that stretch of country extending to the Ventana on the north to the Vado de Piedra on the south?

A. Yes, sir.

Q. And do you know the country lying between the Pueblo of Jemez and Zia and the Puerco river?

A. Yes.

Q. Do you know the place called the Ojo del Espiritu Santo?

A. Yes.

Q. What age were you when you first knew that land?

A. I was about twelve or thirteen when I was with my father's sheep.

Q. What were you doing with the sheep?

A. I was herding them.

Q. Where?

131 A. All over that ground, from the Rio Puerco on this side to the other side, when the Indians would permit it and allow it.

Q. On what side of the Rio Puerco did you generally pasture the sheep?

A. On this side most of the time.

Q. Do you mean the east side or the west side?

A. From the Rio Puerco east.

Q. What length of time, from the time you were ten or twelve years of age, did you pasture the sheep on the lands lying between the Rio Puerco and the Pueblos of Jemez and Zia?

A. All the time, except sometimes when the Indians were hostile—all the time up to the month of October, last year.

Q. When you first went there, at the time you were twelve or thirteen years of age, state who, if any one, was occupying the land from the Ventana to the Vado de Piedra and from the Puerco river to the Pueblos of Jemez and Zia.

A. There were some parties who would go there with their cows, sheep, and cattle, but I cannot say that anybody was there permanently established.

Q. Who were these people—Mexicans or Indians?

A. Mexicans.

Q. Where did the Indians of Jemez, Zia, and Santa Ana pasture their horses, sheep, and stock at that time, if you know?

A. The Indians from Zia would reach as far up as the Canada de los Milpas sometimes, and they would occasionally have some farms, and then they would turn back to the Rincones Zia.

Q. Where is the Rincones Zia with reference to the pueblo?

A. They are on the south side of the pueblo, near the Ceja.

Q. Where did the Jemez Indians at that time pasture their horses and cattle?

132 A. I would see them sometimes up at the place that is called the Penasco—some loose animals—but I never saw any ranch.

Q. Do you know where the place called the Penasco is?

A. Yes, sir.

Q. Have they ever had a ranch or corral there to your acquaintance?

A. There are ranches for sheep-breeding belonging to Jesus Trujillo.

Q. Did you see the Indians of the Pueblo of Zia, Santa Ana, and Jemez have any ranch there?

A. I did not see it.

Q. Did you frequently see that place?

A. Yes, sir; almost every year.

Q. Where did the Indians of Jemez generally keep their cattle?

A. To the Chihuahua, on the mountains. The Navajos stole their horses there once.

Q. What direction from the pueblo?

A. To the north.

Q. Is that their general pasturing place?

A. I was wont to see their horses there.

Q. Ask him if he saw them there frequently or not.

A. Many times.

Q. Where did you see them most of the time?

A. There at the Chihuahua ranch, but when the Indians were hostile they were northeast and a little closer at the Penasco.

Q. Then they only allowed them to reach up to the Penasco when the Indians were hostile?

Mr. EARLE: Objected to as incompetent and leading.

By the COURT: Objection sustained.

133 Q. Where do the Indians of Santa Ana pasture their horses and cattle?

A. On the Mesa. On the Pueblo Mesa on the north to the Ceja on that side also.

Q. On the north side of what?

A. On the north side.

Q. North side of the pueblo?

A. Yes, sir.

Q. What pueblo lies furthest east of these three?

A. Santa Ana.

Q. Did the Santa Ana Pueblos ever pasture their horses as far west as the Puerco river?

Mr. EARLE: I object to the question as leading.

A. No; I never saw them.

Q. Do you know whether or not any one was ever prohibited or disturbed from pasturing their animals on the land lying from the Zia and Jemez pueblo to the Puerco river and from the Ventana to the Vado de Piedra?

A. No, sir.

Q. Do you say you don't know or that they were not prohibited?

A. I was never permitted in the land except from the Canada de los Milpas to the river on this side.

Q. Did you or did you not ever hear of anybody else being permitted to its occupation?

A. I never heard it said to the contrary.

Q. To what extent, if you know, do the people occupy those lands during the time you have known them?

A. With sheep, cattle, horses, and burros.

Q. And in what part of the lands did they occupy them?  
134 A. From these places that they went—Bernalillito, Los Pozos, Los Ojito, Cucho, Chapuli, and Espiritu Santo—and those places have been occupied with property, burros, cattle, by many persons.

Q. At these different points what was there to show occupation?

A. Cattle ranches, and there was a house that belonged to Mariano Perea.

Q. Where was that?

A. At Ojito. There was a house at the Espiritu Santo. There was some other houses belonging to persons who went there before, Diego Baca and the after relatives of Diego Baca, Jesus Sandoval, Juanquin Sandoval, and others who I can't remember. They were there before Diego.

Q. How far back did you first see them there?

A. I don't remember.

Q. How old were you when you first saw them?

A. I don't remember. I did not pay any attention.

Q. Were you a boy or a grown man?

A. I was a grown man.

Q. What were they doing there?

A. They were settled there. I don't know whether they were all planting or herding their cattle.

Q. Was that at the Penasco?

A. I have not seen any one at the Penasco.

Q. What, if any, improvements have you seen at the above-mentioned places?

A. At Bernalillito another house was built by Don Justine Castillo, and on this side of the Ojitos this man, Jose Baca, has some ranches, and he has been raising sheep there for many years.

135 Those are the ones I have seen there.

Q. Over what section of the country do those people pasture their animals?

A. All over the place. I have seen them from the Ventana to the Vado up to the Navajo also.

Recess taken until 2 o'clock.

2 O'CLOCK.

Trial continued; same witness on the stand.

Direct examination continued by Mr. CATRON:

Q. Do you know a place called Canada de los Milpas?

A. Yes, sir.

Q. Do you know the Arroyo Salada?

A. Yes, sir.

Q. How far is the Canada de los Milpas from the town of Pueblo of Zia?

A. About four or five miles.

Q. In what direction?

A. To the west.

Q. How do the Canada de los Milpas and the Arroyo Salada run with respect to each other?

A. The Canada de los Milpas connects with the arroyo somewhat above.

Q. Above what?

A. Above the Arroyo Salada.

Q. How far is it from the church of the Pueblo of Zia to the point where the two come together?

A. About a league.

Q. Whereabouts are these pieces of land that you state there had been some cultivation in the Arroyo Salada with reference to  
136 where the Canada de las Milpas and the Arroyo Salada come together?

A. Somewhat distant to the south.

Q. Is it a long distance or a short distance?

A. A small distance—about two miles.

Q. How much cultivation was there in the Canada de las Milpas?

A. There were some watermelons, muskmelons, pumpkins, and some strips of corn.

Q. How many years did you say it was since you saw that cultivation there?

A. I don't remember how many years.

Q. When was the last time that you saw any there?

A. I do not remember; it is a long time ago.

Q. You know who did that cultivating?

A. Indians of the Zia Pueblo.

Q. You know where the place Canada de Achavarria is?

A. Yes, sir.

Q. Where is it situated with reference to the Vado de Piedra?

A. On the south.

Cross-examination by Mr. HOWARD:

Q. Who prohibited you from going upon this tract of land that you have described between the Canada de las Milpas and the Pueblo of Zia?

A. Those from the Pueblo of Zia.

Witness excused.

SEMON ARCHIBEQUE, SWORN, testified on behalf of the defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. Where do you reside?

A. At Algodones.

137 Q. What is your age?

A. I am fifty-nine years old.

Q. Are you acquainted with the tract of land lying between and extending from the Pueblos of Zia and Jemez to the Puerco river?

A. Yes, sir.

Q. Do you know a place called the Ventana?

A. Yes, sir.

Q. Do you know a place called the Vado de Piedra?

A. Yes, sir.

Q. Do you know the land lying between those different points?

A. Yes.

Q. When did you first know it?

A. In the year '53.

Q. How did you happen to know it then?

A. Herding sheep.

Q. Where—where were you herding sheep?

A. In those places of Ceja del Rio and on both this side and on that side.

Q. How many different years did you herd sheep there?

A. I do not remember the years; some years I herded over there and at other times I herded here.

Q. You herded sheep there in the year 1853?

A. I begun to herd them in those places at that time, and then I knew the place.

Q. How was the land between those places I have mentioned occupied, if it was occupied at all within those places, in the year 1853?

A. It was not occupied; they had stock there and animals.

Q. Whose stock was there?

138 A. Several people from the county of Bernalillo and Algodones.

Q. Were there any places on that tract occupied exclusively by any particular individuals?

Mr. EARLE: Object to the question as leading.

By the COURT: Objection overruled.

A. Not in those lands.

Q. Do you know the arroyo called the Arroyo Salada?

A. Yes, sir.

Q. Do you know a cañada called the Canada de los Milpas?

A. Yes, sir.

Q. Where is the Canada de las Milpas situated from the church of the Pueblo of Zia?

A. On the south side.

Q. How far is it from the church of Zia?

A. I am not certain how far, but it probably is five or five and a half miles from that church.

Q. Into what does the Canada de las Milpas empty?

A. Rio Salada.

Q. On which side the Rio Salada?

A. On the north; it empties to the north.

Q. Has the Arroyo Salada any water in it where the Canada de las Milpas empties?

A. Yes, sir; it runs.

Q. Where is the Canada Penasco or Canada de los Ojitos?

A. (No answer.)

Q. Does it run all the year?

A. Yes; that is salt water.

Q. Is there any water running in the Canada de los Milpas?

A. No, sir.

Q. Is or is not the Canada de las Milpas occupied by any one?

139 A. No, sir; it is not.

Q. Do you know whether it ever has been occupied?

A. Yes; in those times.

Q. In what years?

A. From the year '53 later I have seen it occupied by farms—by cultivation.

Q. When was the last time you saw it occupied by any one?

A. I do not remember the year.

Q. What amount of land was occupied by cultivation there?

A. There were some small strips of land sowed with corn and watermelon.

Q. How close does that land lie to the Arroyo Salada?

A. It is probably a mile and a half.

Q. From the junction?

A. From the junction to the farms.

Q. Do you know the place called the Penasco?

A. Yes, sir.

Q. Did you know it in 1853?

A. Afterwards; yes.

Q. You mean that you did not know it in 1853, but afterwards, or that you knew it in '53 and afterwards?

A. Yes, sir.

Q. Which?

A. That I knew it in '53 and afterwards.

Q. Was anybody occupying that place at that time?

A. No, sir.

Q. Was anybody then or has anybody ever occupied it since that time to your knowledge?

A. Yes, sir; afterwards I saw sheep-lambing ranches there.

140 Q. Who was it that had them there?

A. They were various persons there; a man called Jose Antonio Garcia, from the springs, I knew him there lambing.

Q. Were there any improvements there?

A. No, sir.

Q. When did you first see anybody with their sheep at that place?

A. I do not remember the years. I saw them several years.

Q. During the year that you pastured sheep over this pasture land which you have mentioned do you know where the Indians of Zia, Jemez, and Santa Ana pastured their cattle?

A. Yes, sir.

Q. Where?

A. This place from the Mesita de la Vallecita to the Chihuahua.

Q. Do you know the Canada de Achavarria?

A. I do know the cañada.

Q. Do you know the direction in which it runs?

A. No, sir.

No cross-examination and witness excused.

ESQUIPULA NIETO, sworn, testified on behalf of the defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. What is your name?

A. Esquipula Nieto.

Q. What is your age?

A. I understand it to be seventy-two. I was born in the year '22, in the month of March.

Q. Where do you reside?

A. At the Rio Puerco.

Q. How long have you resided there?

141 A. From the year '74 to this date.

Q. Where did you reside before you went to the Rio Puerco?

A. Bernalillito.

Q. Do you know the tract of land extending from the Pueblos of Zia and Jemez to the Puerco river and from the Ventana on the north to the Vado de Piedra on the south?

Q. Yes, sir.

Q. When did you first know that portion of the country?

A. From the time I went upon it, but I did not know the place called the Vado de Piedra when I was very young. When I was very young I knew the Rio Puerco before I knew these other two places, and from '72 to this time I have known them.

Q. When did you first know the Ojo del Espiritu Santo?

A. Three years, as I was at Don Diego's house.

Q. What year or at what age were you when you were at the Mesa Prieta?

A. I was about fourteen or fifteen years.

Q. What were you doing?

A. Herding sheep.

Q. In what direction of the country did you herd sheep?

A. I only passed up and went to herd two months on the other side of the Rio Puerco.

Q. How close did you go?

A. Towards the Toreones.

Q. How much of the country between Jemez and the Rio Puerco did you see at that time?

A. Only portions. We passed with the sheep in the month of November.

Q. How many sheep did you herd?

142 A. I don't remember. I was very young.

Q. To which pueblo did you go closest?

A. Zia.

Q. How long were you going from the Pueblo of Zia to the point of the Mesa Prieta?

A. Only a day passing them.

Q. Did you or did you not observe any other animals or live stock on that road as you were going along?

A. There were several flocks of sheep seen on the plains west of the Ojito and the Mesa Prieta.

Q. Did you see any other animal besides sheep?

A. Only sheep.

Q. What were those sheep that you saw doing?

A. They were pasturing.

Q. In which direction?

A. In one direction and another.

Q. When was the next time you were at that place after the first time you went there?

A. In '74.

Cross-examination by Mr. HOWARD:

Q. Where did you start from with these sheep?

A. Bernalillo.

Re-examination by Mr. CATRON:

Q. Did you see any live stock of the Indians of Jemez and Zia as you went along?

A. No, sir.

Recross-examination by Mr. HOWARD:

Q. Did you know the mark of the Indians at that time on their animals?

A. No, sir.

143 Re-examination by Mr. CATRON:

Q. How would you know that they were Indians' sheep or cattle if you saw them?

A. I could know if the stock belonged to the Indians; they were animals belonging to Spaniards.

Q. Can you tell if the animals belonged to Indians or Mexicans?

A. Yes; I can.

Q. The sheep that you saw, state whether or not there were any herders.

A. Yes; I saw Mexican herders.

Witness excused.

JESUS TRUJILLO, sworn, testified on behalf of defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. What is your name?

A. Jesus Turjillo.

Q. Where do you reside?

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A. At Canon de San Diego.

Q. How old are you?

A. Seventy-eight years old.

Q. How long have you lived at the cañon?

A. Since seventy-eight years.

Q. How far do you live from the Pueblo of Jemez league?

A. A league.

Q. Are you acquainted with the country extending from the Pueblos of Jemez and Zia to the Puerco river?

A. Yes, sir.

Q. And do you know the place called the Ventana?

A. Yes, sir.

144 Q. Do you know the Vado de Piedra?

A. Yes, sir.

Q. Do you know the country lying between those two points?

A. Yes, sir; of course.

Q. How long have you known that country between the Pueblos of Zia and Jemez and the Puerco river and from the Ventana to the Vado de Piedra?

A. From the time I was born.

Q. Have you or have you not been frequently over that country since you were a young man?

A. When I was small, no; but after I was grown.

Q. How old were you when you first went over that land?

A. I was a man; I was about twenty-five years old.

Q. Had you ever seen any portion of it before that time?

A. Not then, because there were many wars then with the Navajos, and we did not go out there.

Q. When you were twenty-five years of age who occupied that land, if anybody?

A. I don't know; the wars were in progress and we could not tell to whom it belonged; no one employed us.

Q. State whether or not you were frequently in the Pueblos of Jemez and Zia when you were young; yet a boy.

A. Yes; I did.

Q. Do you know whether they had any live stock in those two pueblos at that time?

A. They had.

Q. Did you know where they pastured them at that time?

A. I knew.

Q. Where did they pasture them?

145 A. Towards the mesa and surroundings. As there were wars then, they did not go out and pasture that point.

Q. Where is the mesa you speak of?

A. On the east side.

Q. When did you first see any one occupying lands, if you ever saw anybody, between the Puerco river and the pueblos?

A. After the year '40.

Q. How were they occupying it?

A. Pasturing sheep and horses; there were very few of them.

Q. Who were those people pasturing sheep?

A. I did not know, sir. I did not pay any attention to them. I was with my own property.

Q. State whether they were Mexicans or Indians.

A. They were Mexicans.

Q. Since you have known anybody to be occupying that section of the country, state how they have occupied it and to what extent of country they have occupied it.

A. Occupying them how?

Q. In any way that you saw them occupying it, with animals or cultivating it any way.

A. The Mexican people from the Rio Puerco have started farming by the road, but they did not farm.

Q. When did you first see any one at the Ojo del Espiritu Santo?

A. I do not know anything until I was the first that went to possess them.

Q. In what year was that?

A. In '46 or '47.

Q. Before you went there?

A. Understand I was the first.

146 Q. How was the country for eight or ten miles occupied during the time you were at the Ojo del Espiritu Santo?

A. Nothin- and nobody was there.

Q. Was there or was there not any cattle, sheep, or horses herded around there?

A. There were only sheep; there were no cows and horses; there were few.

Q. Where did the Indians of Jemez, Zia, and Santa Ana herd their sheep after you were at the Espiritu Santo?

A. I do not know. I did not pay any attention. Probably they pastured them near their pueblos.

Q. Do you know what has been the custom of the Pueblos of Jemez, Zia, and Santa Ana as to pasturing their animals?

A. Of course.

Q. Where did they pasture their animals generally?

A. To the hills, to the mountains, and to the river.

Q. What is that river called?

A. Jemez.

Q. In what direction from the pueblo did they pasture their animals?

A. I don't know the direction nor where they went. I was not looking out for them.

Q. In which way does the river run?

A. To the south.

Q. Did they pasture them to the north or south of the river near the pueblo?

A. Probably they did; I don't know. I don't know; probably they did.

147 Q. Did you ever know any one to pasture their animals within this tract of land which I have mentioned to you?

A. No; I do not. I was minding my own business and

was taking care of my own property, and my own property was far away.

Q. Where did you take care of your property?

A. To the Juan Jose — land—the Ojo del San Jose.

Q. How long did you live at the Ojo del Espiritu Santo?

A. Four years.

Q. During the time you were living there do you know whether the Pueblo Indians pastured their animals near the spring?

A. I do not.

Q. Did you see any of their animals around there?

A. No, sir.

Q. If there had been any around there, you would have seen them?

A. Of course.

Cross-examination by Mr. HOWARD:

Q. Under whose authority did you go to the Ojo del Espiritu Santo?

A. My own.

Q. Why did you leave the springs?

A. Because notice was served on me that the lands belonged and that the spring belonged to Tomas Baca.

Witness excused.

POLITO MONTOYA, sworn, testified on behalf of the defendants, in Spanish, as follows:

Examination by Mr. CATRON:

Q. How old are you?

A. Forty-six years old.

Q. Where do you reside?

148 A. Albuquerque.

Q. Do you know the tract of land lying between the Pueblos of Jemez and Zia and the River Puerco?

A. Yes, sir.

Q. Have you lived in Albuquerque all your life?

A. No, sir.

Q. Where have you lived in any other part of your life?

A. I have lived here and at the springs and from the springs I went to Albuquerque.

Q. What was the name of the springs?

A. Jemez Hot Springs.

Q. How close to them is the land lying between the Jemez Pueblo and the Puerco river?

A. Twenty-five miles.

Q. How often have you been on the land, if you were ever there—the land lying between the Rio Puerco and the Pueblo of Jemez?

A. I first lived upon it.

Q. Where?

A. First at the Ventana and what is called Canoncito.

Q. How long did you live there?

A. Four years.

Q. During what four years?

A. From '76 to '80.

Q. Part of that time had you ever been on the property in question?

A. No, sir.

Q. What years did you live at Jemez Hot Springs?

A. In the year '80 to the year '90.

149 Q. What opportunity did you have for seeing the property while you lived at the Ventana, extending from the Ventana down to the Vado de Piedra?

A. Not to the Vado de Piedra, but to the Ojo del Espiritu Santo.

Q. What opportunity did you have of seeing that?

A. In traveling over it I saw it.

Q. Frequently or only occasionally?

A. Occasionally when I passed on my own business.

Q. During the time you lived there do you know what land was occupied between the Ojo del Espiritu Santo and the Ventana?

A. Yes.

Q. How was it occupied?

A. There were some settlements at the Ventana consisting of about twenty-five or twenty families.

Q. Between the Ventana and the Ojo del Espiritu Santo did you observe whether there was anything there?

A. Nothing.

Q. What use was made of it?

A. Don Diego was with his family at the Espiritu Santo.

Q. State if any other portion of land besides the Ojo del Espiritu Santo was used for any purpose while you were there.

A. Yes; it was occupied with stock—cows, sheep, and horses.

Q. Whose live stock was that?

A. Several persons.

Q. Belonging to Indians or Mexicans?

A. To Mexicans.

Q. Do you or not know during the time you were at the Ventana where the Indians of Jemez, Zia, and Santa Ana pastured and kept their stock?

A. No, sir.

150 Q. Did you ever see others at any time?

A. No.

Q. If they had been occupying the land between the Ojo del Espiritu Santo when you lived there, would you or not have seen them?

A. Yes, sir.

Q. Have you ever been to Jemez?

A. Yes, sir.

Q. When were you there the first time?

A. When I was at school.

Q. At Jemez?

A. Yes, sir; Father Valencia; at Jemez.

Q. During that time where did the Pueblos of Jemez keep their stock?

A. I was very young. I do not know where they kept them at that time.

Q. What kind of animals did they have?

A. I saw cows there, burros, and horses.

Q. Were there a large number or a small number?

A. A few.

Q. What was their custom as to having the stock driven in at night or leaving them out all the time?

A. They brought them in in the night. It was winter when I was at school.

Q. They brought the cows, burros, and horses all up?

A. Yes, sir.

Q. How long did you remain there?

A. Five months.

Q. Was that what they did with them all the time you were there?

A. Yes; I noticed that they brought them to their corrals.

151 Q. How did they manage them during the daytime when they took them out?

A. They would take them to the pasture.

Q. Did they let them go out themselves, or send some one with them?

A. Some were left out themselves and some were sent out with herders.

Cross-examination by Mr. HOWARD:

Q. Did you go along with these herders and shepherds?

A. Never.

Q. Did you ever follow them out?

A. No, sir.

Q. Did you ever see them after they left the pueblos?

A. Yes.

Q. With their herds?

A. Those Indians that returned.

Q. Isn't it true that always that when you left the Canon de San Diego for the Ventana that you followed the road?

A. Yes, sir; the wagon road.

Q. How far can you see through a hill?

A. If it is high I can't see; — it is small I can see.

Q. Can you see from this road you speak of; can you see to the Vado de Piedra?

A. I have said that I don't know the Vado de Piedra.

Q. Can you see from this road to the Pueblo of Santa Ana?

A. No, sir, because the Rio Salada mountain is between.

Q. Can you see from this road north into the mountains of the Jemez?

A. Yes; from the road I can see the pueblo and the mountains.

Q. Can you see the valley of the Jemez?

A. No, sir.

152 Re-examination by Mr. CATRON:

Q. How far is it from the Pueblo of Jemez to the first water to the west?

A. About six miles.

Q. Where is that water?

A. Rio Salado.

Q. What kind of water?

A. Soda water (agua salado). The water of the Arroyo Salado is salted, but that above is not.

Q. What do you mean by the one above?

A. The water that runs in that arroyo above; below there is a little small hill, and the soda spring is at that top of that.

Witness excused.

WILL. M. TIPTON, heretofore sworn, testified on behalf of the defendants as follows:

Examination by Mr. REYNOLDS:

Q. Mr. Tipton, you have been employed considerably in the surveyor general's office formerly, have you not?

A. Yes, sir; I have.

Q. And you are familiar with the archives of the surveyor general's office, old archives, also?

A. I am.

Q. Look at paper marked "Pueblo Claim T T," in red ink "A," endorsed filed in surveyor general's office May 22, 1874, Miller, C. C., and state, if you can, whether that paper is any portion of the original archives pertaining to the surveyor general's office and received by the first surveyor general from the governor of New Mexico, and state as to how you have your knowledge.

153 Mr. EARLE: I object to the testimony as irrelevant, incompetent, and immaterial.

By the COURT: Admitted subject to objection.

A. This paper bears no mark to indicate that it was one of the papers delivered by the governor of New Mexico to the surveyor general in the year 1854 or '55, at the time the first archives were turned over to the office. My reasons for making this statement are that the paper bears upon it no number indicating that it was indexed, as was done with all the papers which were turned over at that time to the surveyor general. Furthermore it bears the endorsement in the handwriting of Mr. David J. Miller, for many years chief clerk and translator of that office, showing that it was filed there on the 22nd day of May, 1874.

Mr. REYNOLDS: I offer plat number 25, showing the location of the San Ysidro grant.

I offer in evidence census of 1890, showing the population of these pueblos, and p. —.

Witness excused and defendants rest.

Mr. EARLE: Now, if the court please, I move to strike out all the testimony injected into this record showing the occupation of this property but the Espiritu Santo and other places since February, 1848, because the same is incompetent and immaterial.

Which motion was submitted with the case.

I hereby certify that the above and foregoing pages contain a full, true, and correct record of the proceedings had in this cause in open court, the same being case number 50, Pueblos of Zia, Santa Ana, and Jemez vs. The United States *et al.*, up to date; that the testimony of the witnesses reported as speaking in the Spanish language is true and correct as given to me by the official translator of this court.

Santa Fé, N. M., Sept. 6, 1893.

L. F. PARKER, JR.,  
*Official Stenographer.*

154 UNITED STATES OF AMERICA, }  
Territory of New Mexico, }<sup>88</sup>:

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the records and files in my office in the case filed therein in which "The Pueblos of Zia, Jemez, and Santa Ana" are plaintiffs and The United States is defendant, for the confirmation of a certain claim commonly known as the "valley of the Espiritu Santo," No. 50.

Witness my hand and the seal of this honorable court this 9th day of September, A. D. 1893.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,  
By IRENEO L. CHAVES, *Deputy*.

Endorsed on cover: Case No. 15,414. Court of private land claims. Term No., 41. The Pueblos of Zia, Santa Ana, and Jemez, appellants, vs. The United States *et al.* Filed October 7th, 1893.

No. 5.

Step<sup>n</sup> as to add<sup>n</sup> to record.

Filed Oct. 12, 1897.

IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1897.

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THE PUEBLOS OF ZIA, SANTA ANA AND JEMEZ, <i>Appellants</i> , vs. THE UNITED STATES <i>et al.</i>	}	No. 5.
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**STIPULATION.**

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the printed text of the following named documents (to be found as hereinafter mentioned), offered in evidence by the United States on the trial of said cause in the Court of Private Land Claims, and copies of which were omitted from the transcript of the record on file in the office of the Clerk of this Court, may be taken and considered as part of the record in the above entitled cause the same as if said evidence had been properly incorporated into the original record, certified copies of all of which documents are now on file in the office of said Clerk :

(1) Translation of the title papers in the Luis Maria Cabeza de Baca grant, offered in evidence by the United States (R. 72), and now to be found on pages 11, 12, 13 and 14 of the brief of counsel for the United States.

(2) Translation of the title papers of the Town of San Isidro grant, offered in evidence by the United States (R. 72), and now to be found on pages 14, 15, 16, 17, 18 and 19 of the brief of counsel for the United States.

(3) Translation of the title papers in the Town of Canon de San Diego grant, offered in evidence by the United States (R. 72), and now to be found on pages 19, 20, 21, 22, 23 and 24 of the brief of counsel for the United States.

HENRY M. EARLE,

*For Appellants.*

MATT. G. REYNOLDS,

*Special Assistant to the Attorney General,  
for the United States.*

